141-260

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. ~~620~~ 343 53

JOHN N. A. GRISWOLD, PLAINTIFF IN ERROR,

vs.

ROWLAND G. HAZARD, ROWLAND HAZARD, ANNA HAZARD, AND LYDIA TORRY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF RHODE ISLAND.

FILED JUNE 22, 1887.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1888.

No. 629.

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IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF RHODE ISLAND.

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1 Circuit Court of the United States, District of Rhode Island.

ROWLAND G. HAZARD *et al.*
vs.
JOHN N. A. GRISWOLD.

Be it remembered that the following record from the supreme court of the State of Rhode Island within and for the county of Providence was filed in said circuit court on the 12th day of June, A. D. 1883:

THE STATE OF RHODE ISLAND AND
PROVIDENCE PLANTATIONS, PROVIDENCE, *sc.*:

To the sheriffs of our several counties or to their deputies, Greeting:

We command you to summon John N. A. Griswold, of or commorant of the city and State of New York (if he may be [L. S.] found in your precinct), to answer the complaint of Rowland Hazard and Rowland G. Hazard, of South Kingstown, in said State; Anna Hazard, of Newport, in said State, and Lydia Torrey, at the next supreme court, to be holden at Providence, within and for our said county of Providence, on the fourth Monday of March next ensuing the date hereof, in an action of debt for the recovery of a sum of money due and owing to the plaintiffs
2 from the defendant by writing obligatory, under the seals of Thomas C. Durant, the defendant, and one S. Dexter Bradford (now deceased), binding them jointly and severally, and by them given to the plaintiffs (and Isaac P. Hazard, Elizabeth Hazard, Elizabeth Hazard, trustee; Mary P. Hazard, Sophia Vernon, and Anna Horner, all now deceased), which sum of money the defendant unlawfully detains from the plaintiffs, as by declaration to be filed in court will be fully set forth, to the damage of the plaintiffs one hundred thousand dollars. Hereof fail not, and make true return of this writ, with your doings thereon.

Witness Hon. Thomas Durfee, chief justice of our supreme court, at Providence, this third day of March, in the year 1883.

CHARLES BLAKE, *Clerk.*

NEW YORK, N. Y., 26*th Feb'y*, 1883.

Arnold Green, Esq.:

SIR: You are authorized to accept service of any writ against me which may be issued by Rowland G. Hazard and others.

J. N. A. GRISWOLD.

I acknowledge due and legal service of the within writ.
Providence, March 3, 1883.

JOHN N. A. GRISWOLD,
By attorney, ARNOLD GREEN.

3 *Declaration.*

(Filed March 14, 1883.)

Supreme Court. March Term, A. D. 1883.

PROVIDENCE, *sc.:*

Rowland Hazard and Rowland G. Hazard, of South Kingstown, in the State of Rhode Island; Anna Hazard, of Newport, in said State, and Lydia Torrey complain of John N. A. Griswold, of the city and State of New York, commorant of Providence, in said State of Rhode Island, who has been summoned by the sheriff in an action of debt.

For that, heretofore, to wit, on the twenty fourth day of August, A. D. 1868, Thomas C. Durant, as principal, and the defendant and S. Dexter Bradford (now deceased), as sureties, by their writing obligatory of that date, by them signed and sealed with their seals (a copy of which said writing obligatory, with the conditions thereto annexed, is herewith filed and marked "A"), bound themselves, jointly and severally, to the plaintiffs and to Isaac P. Hazard, Elizabeth Hazard, Elizabeth Hazard, trustee; Mary P. Hazard, Sophia Vernon, and Anna Horner (all now deceased) in the sum of fifty-three thousand seven hundred and thirty-five dollars, to be paid to the said obligees, their executors, administrators and assigns.

And the plaintiffs say that said Thomas C. Durant has not kept and performed the conditions of said writing obligatory, but has broken the same, and has not performed the orders and decrees of the supreme court of the State of Rhode Island in the suit in equity of said Isaac P. Hazard and others against said Thomas C. Durant and others, but has neglected and refused and still neglects and refuses to perform the decree of said court in said suit, entered on the second day of December, A. D. 1882 (a copy of which said decree is filed herewith and marked "B").

By reason of which said breach the said writing obligatory has become forfeited and an action has accrued to said plaintiffs to have and demand of said defendant the said sum of fifty-three

4 thousand seven hundred and thirty-five dollars above named.

Yet the said defendant has not, though requested, paid the said sum, nor any part thereof, but has ever refused and still refuses to pay the same—

To the plaintiffs' damage one hundred thousand dollars, as laid in their writ, dated the third day of March, A. D. 1883.

Wherefore they sue by their attorney,

EDWIN METCALF.

Bond Marked "A."

(Copy.)

Know all men that we, Thomas C. Durant, as principal, and John N. A. Griswold and S. Dexter Bradford, as sureties, are firmly bound

to Isaac P. Hazard, Rowland Hazard, Rowland G. Hazard, Elizabeth Hazard, Elizabeth Hazard, trustee; Anna Hazard, Mary P. Hazard, Lydia Torrey, Sophia Vernon, and Anna Horner in the sum of fifty-three thousand seven hundred and thirty-five dollars, to be paid to said obligees, their executors, administrators, or assigns; to which payment we bind ourselves, our several and respective heirs, executors, and administrators, jointly and severally, hereby.

Sealed with our seals and dated this twenty-fourth day of August, A. D. 1868.

The condition of this obligation is that said Thomas C. Durant shall on his part abide and perform the orders and decrees of the supreme court of the State of Rhode Island in the suit in equity of Isaac P. Hazard and others against said Thomas C. Durant and others, now pending in said court within and for the county of Newport.

THOS. C. DURANT. [L. S.]
J. N. A. GRISWOLD. [L. S.]
S. D. BRADFORD. [L. S.]

Executed and delivered in presence of—
FRANCIS B. PECKHAM, JR.

5 *Copy Decree Marked Exhibit "B."*

Supreme Court.

NEWPORT, *sc:*

ISAAC P. HAZARD *et al.*
vs.
THOMAS C. DURANT *et als.* } No. 2. Equity, No. 349.

And now, on this second day of December, A. D. 1882, this cause having heretofore been heard upon exceptions to the report of the master and having been considered by the court, it is thereupon ordered, adjudged, and decreed by the court as follows:

First. That the complainants' exception, No. 10, to the report of the master be sustained, and that in other respects said report be confirmed absolutely.

Second. That the defendant, Thomas C. Durant, is accountable for and do within ninety (90) days from the date hereof pay the sum of sixteen million seventy-one thousand six hundred and fifty-nine $\frac{97}{100}$ (16,071,659.97) dollars, with interest from this date, the said sum, with interest thereon, to be deposited in the registry of this court or to be paid in the first instance to Rowland Hazard, of South Kingstown, in said State, and Henry Martin, of Brooklyn, in the State of New York, who are hereby appointed special commissioners, with authority jointly or severally to collect and receive the same, and with power to take such steps to collect the same as may be necessary and according to law, and said fund, or so much thereof as may be collected by process or otherwise, is hereby directed to be paid and deposited into the registry of this court to the credit of this cause.

Third. Of the aforesaid sum of 16,071,659.97 dollars the defendant, Thomas C. Durant, is hereby allowed and is decreed to be entitled to pay and discharge 8,816,232.93 dollars, or any part thereof, *pro tanto*, by transferring and delivering stock of the Union Pacific Railroad Company and first-mortgage and sinking-fund bonds of said company, as per statement "G," now exhibited to the court and directed to be filed in this cause, with all dividends which
6 may have been collected or received by said defendant or his assigns after the date of this decree, together with interest on the same to the date of payment thereof by said defendant, the certificates of said stock, with transfers thereof, and the said bonds to be delivered to the said Rowland Hazard and Henry Martin, who are hereby appointed special commissioners to receive the same and who are hereby authorized and directed to sell the same, or such portions thereof as may be delivered to them from time to time, as they are received at public auction, and receive the proceeds thereof, and, after deducting the costs and charges of such sales, deposit the same in the registry of this court to the credit of this cause: Provided, however, That the said privilege herein granted to the defendant, Thomas C. Durant, to transfer and deliver said stock and bonds in partial discharge and payment of the sum hereinbefore decreed to be paid by him be exercised by him within thirty days from the date of entry of this decree; and that in default of such transfer and delivery, or of the transfer and delivery of the entire amount of said stock and bonds within the said thirty days, the obligation of the defendant, Thomas C. Durant, to pay the said proportion of the said sum or of the residue of the sum, after deducting the amount of such stocks and bonds as may be delivered as aforesaid at their face value, shall become and is hereby declared to be absolute: And provided further, nevertheless, That the said option or privilege of the said Thomas C. Durant shall not interfere in any manner with any order or decree in the cause touching the transfer, delivery, sale, or other disposition of said stock and bonds.

Fourth. The defendant, Thomas C. Durant, is likewise ordered and directed to transfer and deliver, within thirty days from the date hereof, five thousand seven hundred and seven $\frac{45}{100}$ (5,707.45) shares of the stock of the Credit Mobilier of America (which stock has been found by the master to have been purchased with the funds of the Credit Mobilier, and which stock, with any dividends or profits accrued or to accrue on the same, is hereby declared to be the property of said corporation, subject to the decrees and orders in this cause), with any interest, dividends, rights, benefits, and profits which may have accrued to the said Thomas C. Durant as the holder of the said 5,707.45 shares of stock or any part thereof and not hereinbefore charged against him, said transfer and delivery to be made to the said Rowland Hazard and Henry Mar-
7 tin or either of them, as special commissioners, with power, which is hereby granted to said commissioners, forthwith to take such measures, by suit or suits in their own names or otherwise, as they may be advised is lawful and necessary to enforce such

transfer, collection, or delivery, and said stock to be held by said commissioners subject to the further order of the court in this cause.

Fifth. All interlocutory injunctions heretofore made in this cause, so far as consistent with this decree, are declared to be and are hereby made perpetual, and the further consideration of the cause, and particularly as to allowances to the complainants for costs, expenses, and services and as to the disposition of the fund that may be deposited in the registry of the court to the credit of the cause, and also the consideration of any order or decree which may be necessary in the premises against the defendant, Thomas C. Durant, by reason of any default which may be made by him touching any portion of this decree, and also the consideration of any other and further decree herein against or concerning the defendants other than the said Thomas C. Durant, be, and they hereby are, directed to stand over, with leave to any party in interest, save parties in contempt or parties who may appear to be for any other cause disqualified, to apply at any time for further orders and directions.

Sixth. It is further ordered that the complainants forthwith cause a certified copy of this decree to be delivered to Samuel R. Honey, Esq., of counsel for said Thomas C. Durant, and proof of such delivery and the time and place thereof, to be filed in the clerk's office of this court, in said county.

8 *Defendant's Pleas.*

(Filed March 17, 1883.)

Supreme Court, Providence County. March Term, 1883.

HAZARD *et al.* *vs.* GRISWOLD. } Decl. 2236.

1. And the said defendant, by Samuel R. Honey and Arnold Green, his attorneys, comes and defends the wrong and injury, when, &c., and craves oyer of the said supposed writing obligatory in the said declaration mentioned, and it is read to him; and he also craves oyer of the condition of the said supposed writing obligatory, and it is read to him in these words: "The condition of this obligation is that said Thomas C. Durant shall on his part abide and perform the orders and decrees of the supreme court of the State of Rhode Island in the suit in equity of Isaac P. Hazard and others against said Thomas C. Durant and others, now pending in said court within and for the county of Newport;" which being read and heard, the said defendant says that the said supposed writing obligatory is not his deed; and of this he puts himself upon the country, etc.

2. And, for a further plea in this behalf, by leave of court first had and obtained, the said defendant says that he ought not to be charged with the said debt by virtue of the said supposed writing

obligatory, because he says that the said writing in the said declaration mentioned was obtained from the said defendant by the said plaintiffs, and by others in collusion with them, by fraud, covin, and misrepresentation, and that the said writing was executed, in confidence of such misrepresentations, at Newport, in the State of Rhode Island, to wit, at Providence, in the county of Providence, in said State. Wherefore he, the said defendant, saith that the said writing in the said declaration mentioned was and is void in law, and this he, the said defendant, is ready to verify. Wherefore he prays judgment if he ought to be charged with the said debt by virtue of said writing.

3. And, for a further plea in this behalf, by leave of court first had and obtained, the said defendant says that he ought not to be
9 charged with the said debt by virtue of the said supposed writing obligatory, because he says that the said writing in the said declaration mentioned was obtained from the said defendant by the said plaintiffs, and by others in collusion with them, by fraud, covin, and misrepresentation—that is to say, that heretofore the said Thomas C. Durant was arrested on a writ of *ne exeat*, issued from the supreme court of the State of Rhode Island in a suit in equity, wherein one Isaac P. Hazard was complainant and the said Durant and others respondents, which suit is the suit in equity mentioned in the condition to said supposed writing obligatory, and that the plaintiffs, with other persons colluding with them and assisting them as their agents and attorneys, procured the signature of the defendant to said supposed writing obligatory, representing to him that said writing was a bail bond and a bond conditioned that said Durant should abide the orders and decrees of the said supreme court in said cause, and that the defendant signed and sealed said writing relying upon and believing such representations made by the plaintiffs and such other persons colluding with them and assisting them as their agents and attorneys, all which representations were untrue and false, and by means of said misrepresentations the defendant, in confidence thereof, signed and sealed said writing at Newport, in the State of Rhode Island, to wit, at said Providence. Wherefore the defendant saith that the said writing in the declaration mentioned was and is void in law, and this he is ready to verify. Wherefore he prays judgment if he ought to be charged with the said debt by virtue of the said writing.

4. And, for a further plea in this behalf, by leave of court first had and obtained, the said defendant says that he ought not to be charged with the said debt by virtue of said writing, because he says that heretofore, on the 22d day of August, A. D. 1868, one Isaac P. Hazard filed a bill of complaint in equity in the supreme court of the State of Rhode Island, in the county of Newport, in behalf of himself and all other stockholders who might join him, of a corporation known as the Credit Mobilier of America, against said Thomas C. Durant and others, which bill is the original bill in the suit in equity mentioned in the condition of said supposed writing obligatory, a duly authenticated copy of which bill and of the record of which suit is here produced and made a part of this plea. And the de-

fendant says that it appears from an inspection of said bill
10 and of said record of said suit since that the supreme court had no jurisdiction thereof, nor of the matters therein set forth and charged, nor of the suit in equity begun by and founded on said bill whereon a court of equity and said supreme court can or could make any valid order or decree whatever, except an order dismissing said bill. And the defendant further saith that, notwithstanding its lack of jurisdiction over said bill, said matters, and said suit, the said supreme court, at the request and on motion of the plaintiffs in this action, proceeded to make certain pretended orders and decrees in said suit which the said Durant was not and is not by law required to abide and perform, and that no orders nor decrees have been made in the said suit in the said condition of said writing mentioned which the said Durant could or can be lawfully called upon to abide and perform; and this the said defendant is ready to verify. Wherefore he prays judgment if he ought to be charged with the said debt by virtue of the said supposed writing obligatory.

5. And, for a further plea in this behalf, by leave of court first had and obtained, the said defendant says that he ought not to be charged with the said debt by virtue of the said supposed writing obligatory, because he says that the said Thomas C. Durant, who is the principal obligor mentioned in the said supposed writing obligatory, at the time of the making of the said writing, to wit, on the twenty-fourth day of August, A. D. 1868, aforesaid, at Newport, in the State of Rhode Island, to wit, at Providence, in the county of Providence and State aforesaid, was unlawfully imprisoned by the said plaintiffs and others in collusion with them, and then and there detained in prison until by the force and duress of imprisonment of him, the said Thomas C. Durant, he, with the said defendant as surety, made the said writing, signed and sealed and delivered the same to the said plaintiffs as their deed. Wherefore, he, the said defendant, saith that the said writing in the said declaration mentioned, which is the same writing as signed and sealed by the said Durant and the said defendant, was and is void in law; and this the said defendant is ready to verify. Wherefore he prays judgment if he ought to be charged with the said debt by virtue of said writing.

6. And, for a further plea in this behalf, by leave of court first had and obtained, the said defendant comes and defends when, etc., and says that the said plaintiffs ought not to have and maintain their said action against him, because he says that before the commence-
11 ment of this suit, to wit, on the — day of ——, 1881, in the city, county, and State of New York, to wit, at Providence aforesaid, the said plaintiffs, by their certain writing of release, sealed with their seals, and now produced and shown to the court, the date whereof is a certain day and year therein mentioned, to wit, the day and year last aforesaid, did remise, release, and forever quitclaim unto the said Thomas C. Durant, who is the principal obligor mentioned in the said supposed writing obligatory, his heirs, executors, and administrators, the said supposed debt in the declaration mentioned, and all sums of money then due and owing or thereafter

to become due, together with all and all manner of actions and causes of action, suits, bills, bonds, writings obligatory, debts, dues, duties, reckonings, accounts, and sums of money, judgments, executions, extents, quarrels, controversies, trespasses, damages, and demands whatsoever, both at law and in equity, or otherwise howsoever, which they, the plaintiffs, then had or which they should or might at any time or times thereafter have, claim, allege, or demand against the said Thomas C. Durant for or by reason or means of any matter, cause, or thing whatsoever from the beginning of the world to the day of the date of the said deed or writing of release, as by the said deed or writing of release fully appears; and this he is ready to verify. Wherefore he prays judgment whether the said plaintiffs ought to have and maintain their said action against him.

7. And, for a further plea in this behalf, by leave of court first had and obtained, the said defendant says that the said plaintiffs ought not to have and maintain their said action against him, because he says that the suit in equity of Isaac P. Hazard and others against said Thomas C. Durant and others, mentioned in the condition of said supposed writing obligatory, is a certain suit in equity commenced by the said Isaac P. Hazard, who filed his bill of complaint therein in the said supreme court of Rhode Island on the 22d day of August, A. D. 1868, in the county of Newport, in said State, in behalf of himself and all other stockholders of a corporation known as the Credit Mobilier of America who might thereafter join him, against the said Thomas C. Durant and others, which bill is the original bill in the suit in equity mentioned in the condition of said supposed writing obligatory, a duly authenticated copy of which bill and of the record of which suit is here produced and made a part of this plea; and the defendant says that after the commence-

12 ment of the said suit in equity the said Roland Hazard, Rowland G. Hazard, Elizabeth Hazard, Elizabeth Hazard, trustee; Anna Hazard, Mary P. Hazard, Lydia Torrey, Sophia Vernon, and Anna Homer, who are the persons named as obligees in the said writing, became parties complainant therein; and thereafter, to wit, on the 17th day of November, A. D. 1875, the said Rowland G. Hazard filed his bill of complaint in equity in the court of common pleas (No. 2), in the city of Philadelphia, in the State of Pennsylvania, against the said Credit Mobilier of America and others, which said suit was afterwards removed to the circuit court of the United States for the eastern district of Pennsylvania, the same being the former *of the* domicile of the said corporation, in which said suit such proceedings were had that one Oliver Ames was appointed by said court receiver of all the goods, chattels, rights, and effects of the said corporation; and that thereafter the said receiver obtained from the said court authority to deliver to the said Thomas C. Durant a deed of release of all sums of money then due or owing or thereafter to become due, together with all manner of actions, causes of action, suits, bills, bonds, writings obligatory, debts, dues, duties, reckonings, accounts, sums of money, judgments, executions, extents, quarrels, controversies, trespasses, damages, and demands whatsoever, both at law and in equity, or otherwise howsoever,

which it, the said Credit Mobilier, then had, or which it should or might at any time or times thereafter have, claim, allege, or demand against the said Thomas C. Durant for or by reason or means of any matter, cause, or thing whatsoever from the beginning of the world to the day of the date of the said deed or writing of release, as by the said deed or writing of release, reference being thereunto had, will fully appear, a duly authenticated copy of which said bill of complaint and of the record of which suit is here produced and made a part of this plea; and the said defendant says that afterwards, to wit, on the — day of ——, A. D. 1881, the said Oliver Ames, acting by virtue of the said authority and in consideration of the delivery to him by the said Durant of a deed conveying the title to the lands mentioned in the said order authorizing the said release, did deliver to the said Thomas C. Durant a deed of release of all sums of money then due and owing or thereafter to become due, together with all manner of actions, causes of action, suits, bills, bonds, writings obligatory, debts, dues, duties, reckonings, ac-
13 counts, sums of money, judgments, executions, extents, quarrels, controversies, trespasses, damages, and demands whatsoever, both at law and in equity, or otherwise howsoever, which the said Credit Mobilier of America had against him, the said Thomas C. Durant, for or by reason or means of any matter, cause, or thing whatsoever from the beginning of the world to the date of the said deed or writing of release, as by said deed or writing of release, which is here produced and shown to the court, fully appears; and this he is ready to verify. Wherefore he prays judgment whether the said plaintiffs ought to have and maintain their said action against him.

8. And, for a further plea in this behalf, by leave of court first had and obtained, the said defendant says that the said plaintiffs ought not to have and maintain their said action against him, because he says that the pretended decree of the supreme court of the State of Rhode Island in the plaintiffs' declaration mentioned is not a decree of said court in the suit in equity of Isaac P. Hazard and others against said Thomas C. Durant and others, mentioned in the condition of said supposed writing obligatory; and this he is ready to verify. Wherefore he prays judgment whether the said plaintiffs ought to have and maintain *in* their said action against him.

9. And, for a further plea in this behalf, by leave of court first had and obtained, the said defendant says that the said plaintiffs ought not to have and maintain their said action against him, because he says that the supreme court of the State of Rhode Island in the suit in equity of Isaac P. Hazard and others against Thomas C. Durant and others, mentioned in the condition of said writing, hath not made any orders and decrees; and this he is ready to verify. Wherefore he prays judgment whether the said plaintiffs ought to have or maintain their said action against him.

10. And, for a further plea in this behalf, by leave of court first had and obtained, the said defendant says that the said plaintiffs ought not to have and maintain their said action against him, because he says that the said Thomas C. Durant did abide and per-

form the orders and decrees of the supreme court of the State of Rhode Island in the said suit in equity mentioned in the condition of said writing, according to the form and effect of said condition,
14 at Newport, in the county of Newport, in the State of Rhode Island, to wit, at Providence, in the county of Providence, in said State; and this he is ready to verify. Wherefore he prays judgment whether the said plaintiffs ought to have or maintain their said action against him.

SAMUEL R. HONEY,
ARNOLD GREEN,
Attorneys for Defendant.

And the defendant gives notice that he will ask leave to file further pleas.

And the defendant gives notice to the plaintiffs to prove his signature and the signatures of the other parties to the said pretended writing obligatory in the declaration mentioned.

By his attorneys, SAMUEL R. HONEY,
ARNOLD GREEN.

Petition for Removal.

(Filed March 27, 1883.)

In the Supreme Court of Rhode Island within and for the County of Providence and State of Rhode Island.

ROWLAND HAZARD *et als.* *vs.* JOHN N. A. GRISWOLD. } Petition for Removal to the Circuit Court of the United States, District of Rhode Island.

To said supreme court:

Your petitioner respectfully shows to this honorable court that the matter and amount in dispute in the above-entitled suit exceeds, exclusive of costs, the sum or value of five hundred dollars.

That the controversy in said suit is between citizens of different States, and that the petitioner was at the time of the commencement of this suit and still is a citizen of the State of New York, and that Rowland Hazard, Rowland G. Hazard, Anna Hazard, and Lydia Torrey were then and still are citizens of the State of Rhode Island.

15 And your petitioner offers herewith a bond, with good and sufficient sureties, for his entering in said circuit court of the United States, on the first day of its next session, a copy of the record in this suit, and for paying all costs that may be awarded by said circuit court if said court shall hold that this suit was wrongfully or improperly removed thereto.

And he prays this honorable court to proceed no further herein, except to make the order of removal required by law, and to accept the said sureties and bond, and to cause the record herein to be re-

moved into said circuit court of the United States in and for the district of Rhode Island; and he will ever pray.

JOHN N. A. GRISWOLD,
Per ARNOLD GREEN,
SAMUEL R. HONEY,
Attorneys for Petitioner.

STATE OF RHODE ISLAND, } ss:
Newport County, }

I, Samuel R. Honey, being duly sworn, do say that I am one of the attorneys for the petitioner in the above-entitled cause; that I have read the foregoing petition and know the contents thereof, and that the statements and allegations therein contained are true, as I verily believe.

SAMUEL R. HONEY.

Subscribed by the said Samuel R. Honey in my presence and by him sworn to before me this the twenty-first day of March, A. D. 1883.

B. MARSH, JR.,
Notary Public.

Bond on Removal.

(Filed March 27, 1883.)

Know all men by these presents that I, John N. A. Griswold, as principal, and Samuel R. Honey and Thomas Dunn, as sureties, are held and firmly bound unto Rowland Hazard, Rowland
16 G. Hazard, Anna Hazard, and Lydia Torrey in the penal sum of one thousand dollars; the payment whereof, well and truly to be made unto the said Rowland Hazard, Rowland G. Hazard, Anna Hazard, and Lydia Torrey, their heirs and assigns, we bind ourselves, our heirs, representatives, and assigns, jointly and severally, firmly by these presents—

Yet upon these conditions: The said John N. A. Griswold having petitioned the supreme court of Rhode Island within and for the county of Providence and State of Rhode Island for the removal of a certain cause therein pending, wherein Rowland Hazard, Rowland G. Hazard, Anna Hazard, and Lydia Torrey are plaintiffs and John N. A. Griswold is defendant, to the circuit court of the United States in and for the district of Rhode Island:

Now, if the said John N. A. Griswold, your petitioner, shall enter in the said circuit court of the United States, on the first day of its next session, a copy of the record in said suit, and shall well and truly pay all costs that may be awarded by said circuit court of the United States if said court shall hold that said suit was wrongfully or improperly removed thereto, then this obligation to be void; otherwise in full force and virtue.

Witness our hands and seals this twentieth day of March, A. D. 1883.

J. N. A. GRISWOLD. [L. S.]
SAMUEL R. HONEY. [L. S.]
THOMAS DUNN. [L. S.]

STATE OF RHODE ISLAND, &c., } *sc:*
County of Newport, }

I, Samuel R. Honey, of said county, the surety named in the foregoing bond, being duly sworn, do depose and say that I am a resident of the State of Rhode Island and a property-holder therein; that I am worth the sum of one thousand dollars over and above all my debts and liabilities and exclusive of property by law
17 exempt from execution; that I have property in the State of Rhode Island, liable to execution, of the value of more than one thousand dollars.

SAMUEL R. HONEY.

Subscribed in my presence by Samuel R. Honey and by him sworn to before me this twenty-first day of March, A. D. 1883.

B. MARSH, JR.,
Notary Public.

STATE OF RHODE ISLAND, &c., }
County of Newport. }

I, Thomas Dunn, of said county, the surety named in the foregoing bond, being duly sworn, do depose and say that I am a resident of the State of Rhode Island and a property-holder therein; that I am worth the sum of one thousand dollars over and above all my debts and liabilities and exclusive of property by law exempt from execution; that I have property in the State of Rhode Island liable to execution of the value of more than one thousand dollars.

THOMAS DUNN.

Subscribed in my presence by Thomas Dunn and by him sworn to before me this twenty-first day of March, A. D. 1883.

WILLIAM T. READ,
Notary Public.

18 *Petition for Removal.*

(Filed March 14, 1883.)

In the Supreme Court of Rhode Island within and for the County of Providence and State of Rhode Island.

ROWLAND HAZARD *et als.* } Petition for Transfer of Suit to Federal
vs. } Court.
JOHN N. A. GRISWOLD. }

To the honorable the supreme court of Rhode Island within and for the county of Providence and State of Rhode Island:

Your petitioner, John N. A. Griswold, respectfully shows that he is defendant in the foregoing-entitled suit, and that the same was commenced on or about the third day of March, 1883, in said court; that your petitioner was, at the time of bringing said suit and still is, a citizen of the State of New York and a resident thereof. Your

petitioner further shows that there is and was at the time said suit was brought a controversy therein between your petitioner and the said plaintiffs, who are citizens of the State of Rhode Island and residents thereof; that said action was brought by said plaintiffs for the recovery of damages for the alleged breach of the condition of a bond, and that the matter in dispute in this suit exceeds the sum of five hundred dollars, exclusive of costs. Your petitioner further represents that this suit has not been tried, but is now pending for trial in the supreme court of the State of Rhode Island for said county of Providence, and that your petitioner desires to remove the same into the circuit court of the United States for the district of Rhode Island, in pursuance of the act of Congress in that behalf provided, to wit, the Revised Statutes of the United States, section 639, subdivision 3.

Your petitioner further says that he has filed the affidavit required by the statute in such cases and offers herewith his bond, executed by Samuel R. Honey and Thomas Dunn, of the city and county of Newport, in the State of Rhode Island, as sureties, in the penal sum of one thousand dollars, conditioned as by said act of Congress required.

19 Your petitioner therefore prays that the said bond may be accepted as good and sufficient, according to the said act of Congress, and that the said suit may be removed into the next circuit court of the United States in and for said district of Rhode Island, pursuant to the aforesaid act of Congress in such case made and provided, and that no further proceeding may be had therein in this court.

And your petitioner will ever pray, &c.

JOHN N. A. GRISWOLD,
Per SAMUEL R. HONEY,
ARNOLD GREEN,
Attorneys for Petitioner.

Affidavit to Remove.

(Filed March 27, 1883.)

In the Supreme Court, State of Rhode Island, Providence County.

ROWLAND G. HAZARD *et als.*
vs.
JOHN N. A. GRISWOLD. } Affidavit.

STATE OF NEW YORK, }
County of New York, } *ss:*

I, John N. A. Griswold, being duly sworn, do say that I am the defendant in the above-entitled cause; that I have reason to believe and do believe that from prejudice and local influence I will not be able to obtain justice in said State court.

J. N. A. GRISWOLD.

Subscribed by the said John N. A. Griswold in my presence and by him sworn to before me, at the city of New York, this 22d day of March, A. D. 1883.

JAS. HAYWARD,
Notary Public in and for New York County.

20 No. 1.

STATE OF NEW YORK, }
City and County of New York, } ss:

I, Patrick Keenan, clerk of the city and county of New York, and also clerk of the supreme court for the said city and county, the same being a court of record, do hereby certify that J. W. Hayward, before whom the annexed deposition was taken, was at the time of taking the same a notary public of New York, dwelling in said city and county, duly appointed and sworn and authorized to administer oaths to be used in any court in said State and for general purposes, and that his signature thereto is genuine, as I verily believe.

[L. S.] In testimony whereof I have hereunto set my hand and affixed the seal of the said court and county the 26th day of March, 1883.

PATRICK KEENAN, *Clerk.*

Bond on Removal.

(Filed March 27, 1883.)

Know all men by these presents that we, John N. A. Griswold, as principal, and Samuel R. Honey and Thomas Dunn, both of the city and county of Newport, in the State of Rhode Island, &c., as sureties, are hereby held and firmly bound unto Rowland Hazard, Rowland G. Hazard, Anna Hazard, and Lydia Torrey in the penal sum of one thousand dollars, lawful money of the United States; for the payment of which, well and truly to be made, we bind ourselves, jointly and severally, firmly by these presents.

The condition of this obligation is such that if the said John N. A. Griswold shall enter and file or cause to be entered and filed in the next circuit court of the United States in and for the district of Rhode Island, on the first day of its session, copies of all
21 process, pleadings, depositions, testimony, and other proceedings in a certain suit or action now pending in the supreme court of Rhode Island within and for the county of Providence and State of Rhode Island, in which Rowland Hazard, Rowland G. Hazard, Anna Hazard, and Lydia Torrey are plaintiffs and John N. A. Griswold is defendant, and shall do such other appropriate acts as by the acts of Congress in that behalf are required to be done upon the removal of such suit from said State court into the United States court, then this obligation to be void; otherwise of force.

Dated March 20th, A. D. 1883.

J. N. A. GRISWOLD. [L. S.]
SAMUEL R. HONEY. [L. S.]
THOS. DUNN. [L. S.]

STATE OF RHODE ISLAND, &c., } *sc:*
County of Newport, }

I, Samuel R. Honey, of said county, the surety named in the foregoing bond, being duly sworn, do depose and say that I am a resident of the State of Rhode Island and a property-holder therein; that I am worth the sum of one thousand dollars over and above all my debts and liabilities and exclusive of property by law exempt from execution; that I have property in the State of Rhode Island liable to execution of the value of more than one thousand dollars.

SAMUEL R. HONEY.

Subscribed in my presence by Samuel R. Honey and by him sworn to before me this 21st day of March, A. D. 1883.

B. MARSH, JR.,
Notary Public.

STATE OF RHODE ISLAND, &c., } *sc:*
County of Newport, }

I, Thomas Dunn, of said county, the surety named in the foregoing bond, being duly sworn, do depose and say that I am
22 a resident of the State of Rhode Island and a property-holder therein; that I am worth the sum of one thousand dollars over and above all my debts and liabilities and exclusive of property by law exempt from execution; that I have property in the State of Rhode Island liable to execution of the value of more than one thousand dollars.

THOS. DUNN.

Subscribed in my presence by Thomas Dunn and by him sworn to before me this 21st day of March, A. D. 1883.

WILLIAM T. READ,
Notary Public.

Order for Removal.

(Entered May 5, 1883.)

Supreme Court. March Term, 1883.

HAZARD *et al.* }
vs. } Decl. 2236.
GRISWOLD. }

In the above case the defendant having, on the 27th day of March, 1883, filed his petitions for a removal of said cause to the circuit court of the United States, and having filed with said petitions proper bonds and affidavits supporting said petitions:

It is now, on consideration thereof, ordered that this court proceed no further in said cause, and that the clerk certify copies of the pleadings and other papers in said cause, as the same were had when said petitions were filed, together with copies of said peti-

tions, affidavits, and bonds, and of this order, to be filed in said circuit court.

Entered as the order of the court, 33rd day M. T., 1883 (May 5, 1883.)

By order: CHARLES BLAKE, *Clerk.*

23 *Certificate of Clerk.*

(May 7, 1883.)

State of Rhode Island and Providence Plantations.

PROVIDENCE, *sc:*

SUPREME COURT, CLERK'S OFFICE,
PROVIDENCE, *May 7th*, 1883.

I, Charles Blake, clerk of the supreme court of said State for the county of Providence, hereby certify the foregoing to be a true copy of the case No. 2236, Rowland Hazard *et al. vs.* John N. A. Griswold, which said case was entered in this court, at the March term thereof, holden at Providence, within and for said county, on the fourth Monday of March, A. D. 1883; and upon the 33rd day of said term the same was, upon petition of the defendant, ordered by said court to be removed and certified to the circuit court of the United States for the district of Rhode Island; all which appears of record in this office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this seventh day of May, A. D. 1883.
[L. S.]

CHARLES BLAKE, *Clerk.*

24 United States Circuit Court, District of Rhode Island.

ROWLAND G. HAZARD
vs.
JOHN N. A. GRISWOLD.

In the above case it is agreed that the plaintiff may demur specially to the second, third, fourth, fifth, and seventh pleas, and in case said demurrers are overruled may reply to said pleas as if no demurrers had been filed, and in case said demurrers are sustained the defendant may file amended pleas, as he may desire.

Also that each party will furnish the other copies of all pleadings when and as filed.

EDWIN METCALF.

ARNOLD GREEN,
Attorney for Defendant.

November 26, 1883.

25 Circuit Court of the United States, District of Rhode Island.

Plaintiff's Demurrers and Replications to Defendant's Pleas.

(Filed December 24, 1883.)

1. And the said plaintiffs, as to the plea of the said defendant by him first above pleaded, and whereof he hath put himself upon the country, doth the like.

By their attorney, EDWIN METCALF.

2. And the said plaintiffs, as to the plea of the said defendant by him secondly above pleaded, say that the same and the matters therein contained, in the manner and form as the same are above pleaded and set forth, are insufficient in law to bar or preclude them, the said plaintiffs, from having or maintaining their aforesaid action thereof against the said defendant, and that they, the said plaintiffs, are not bound by law to answer the same; and this they, the said plaintiffs, are ready to verify.

Wherefore, by reason of the insufficiency of the said plea in this behalf, the said plaintiffs pray judgment and their debt aforesaid, together with their damages by them sustained on occasion of the detention thereof, to be adjudged to them, etc.

And, for causes of demurrer in law to the said second plea, the said plaintiffs here point out and offer to the court the following causes, to wit: For that the said defendant, in his second plea, nowhere sets forth any instance of or facts constituting fraud or covin; nor does he set forth the misrepresentations by which said writing obligatory is alleged to have been obtained; nor does he show or aver that said defendant was misled, deceived by, or relied upon such pretended misrepresentations, and also that said second plea is in other respects uncertain, informal, and insufficient.

By their attorney, EDWIN METCALF.

3. And the said plaintiffs, as to the plea of the said defendant by him thirdly above pleaded, say that the same and the matter therein contained, in the manner and form as the same are above
26 pleaded and set forth, are insufficient in law to bar or preclude them, the said plaintiffs, from having or maintaining their aforesaid action thereof against the said defendant, and that they, the said plaintiffs, are not bound by law to answer the same; and this they, the said plaintiffs, are ready to verify.

Wherefore, by reason of the insufficiency of the said plea in this behalf, the said plaintiffs pray judgment and their debt aforesaid, together with their damages by them sustained on occasion of the detention thereof, to be adjudged to them, etc.

And, for causes of demurrer in law to the said third plea, the plaintiffs here point out and offer to the court the following causes, to wit: (1.) For that the said defendant, in his said third plea, nowhere alleges that the said defendant is an illiterate person, nor that he is blind, and that upon his request to have the said writing ob-

ligatory read to him it was falsely read, nor that he did not himself read the said writing obligatory, nor that he was ignorant of the contents thereof, nor that his signature to said writing obligatory was obtained by the fraudulent substitution of the said writing obligatory for another instrument which it was his intention to execute as surety, nor any other facts which show that he did not, in fact, know, and was not bound in law to know, the legal tenor and effect of such writing, or which would entitle him, the said defendant, to rely upon the alleged representations of the plaintiffs and their agents and attorneys.

(2.) And also for that the said defendant, in his said third plea, nowhere alleges that the alleged representations were made by the said plaintiffs and their agents and attorneys with a knowledge of their falsity or with intent to deceive, and also that the said third plea is in other respects uncertain, informal, and insufficient.

By their attorney, EDWIN METCALF.

4. And the said plaintiffs, as to the plea of the said defendant by him fourthly above pleaded, say that the same and the matters therein contained, in the manner and form as the same are above pleaded and set forth, are insufficient in law to bar or preclude them, the said plaintiffs, from having or maintaining their aforesaid action thereof against the said defendant, and that they, the said plaintiffs, are not bound by law to answer the same; and this they, the said plaintiffs, are ready to verify.

27 Wherefore, by reason of the insufficiency of the said plea in this behalf, the said plaintiffs pray judgment and their debt aforesaid, together with their damages by them sustained on occasion of the detention thereof, to be adjudged to them, etc.

And, for causes of demurrer in law to the said fourth plea, the plaintiffs here point out and offer to the court the following causes, to wit: For that the defendant, in his said fourth plea, nowhere alleges that the said supreme court of the State of Rhode Island had not jurisdiction of said suit in said fourth plea recited by reason of the said Thomas C. Durant appearing therein as defendant, or by reason of his submitting to the judgment of said supreme court in said suit, nor does said plea show that said supreme court of Rhode Island had not jurisdiction of said suit and of said Durant, nor that its orders and decrees therein were not valid and binding upon said Durant; and also that the said fourth plea is in other respects uncertain, informal, and insufficient.

By his attorney, EDWIN METCALF.

5. And the said plaintiffs, as to the plea of the said defendant by him fifthly above pleaded, say that the same and the matters therein contained, in the manner and form as the same are above pleaded and set forth, are insufficient in law to bar or preclude them, the said plaintiffs, from having or maintaining their aforesaid action thereof against the said defendant, and that they, the said plaintiffs, are not bound by law to answer the same; and this they, the said plaintiffs, are ready to verify.

Wherefore, by reason of the insufficiency of the said plea in this behalf, the said plaintiffs pray judgment, and their debt aforesaid, together with their damages by them sustained on account of the detention thereof, to be adjudged to them, etc.

And, for causes for demurrer in law to the said fifth plea, the plaintiffs here point out and offer to the court the following causes, to wit: For that the said defendant, in his said fifth plea, nowhere alleges that the said writing obligatory was executed by him, the said defendant, under force and duress of imprisonment of him, the said defendant, nor that he did not voluntarily execute the said writing obligatory, as surety, with knowledge that the same was executed by the said Thomas C. Durant, as principal, under
28 force and duress of imprisonment, as alleged in said fifth plea; and also that the said fifth plea is in other respects uncertain, informal, and insufficient.

By their attorney, EDWIN METCALF.

6. And, as to the plea of the said defendant by him sixthly above pleaded, the plaintiffs say that they did not before the commencement of this suit release, remise, and quitclaim unto the said Thomas C. Durant, his heirs, executors, and administrators, in manner and form as the said defendant hath in his sixth plea alleged; and this the said plaintiffs pray may be inquired of by the country.

By their attorney, EDWIN METCALF.

7. And the said plaintiffs, as to the plea of the said defendant by him seventhly above pleaded, say that the same and the matters therein contained, in the manner and form as the same are above pleaded and set forth, are insufficient in law to bar or preclude them, the said plaintiffs, from having or maintaining their aforesaid action thereof against the said defendant, and that they, the said plaintiffs, are not bound in law to answer the same; and this they, the said plaintiffs, are ready to verify.

Wherefore, by reason of the insufficiency of the said plea in this behalf, the said plaintiffs pray judgment, and their debt aforesaid, together with their damages by them sustained on occasion of the detention thereof, to be adjudged to them, etc.

And, for causes of demurrer in law to the said seventh plea, the plaintiffs here point out and offer to the court the following causes, to wit: That the said circuit court of the United States for the eastern district of Pennsylvania could not by reason of want of jurisdiction authorize a receiver appointed by and acting under the authority of said court, and that said receiver had no power to give the said Durant a valid release from his written obligation to abide by and perform the orders and decrees of the supreme court of the State of Rhode Island, nor in any other way interfere with the proceedings of said supreme court; and also that the said seventh plea is in other respects uncertain, informal, and insufficient.

By their attorney, EDWIN METCALF.

29 8. And, as to the plea of the said defendant by him eighthly above pleaded, the said plaintiffs say that the alleged decree of the supreme court of the State of Rhode Island in the plaintiffs' declation mentioned is a decree of said court in the suit in equity of Isaac P. Hazard and others against Thomas C. Durant and others, mentioned in the condition to said writing, in manner and form as the plaintiffs have in their declaration alleged; and this they pray may be inquired of by the country.

By their attorney, EDWIN METCALF.

9. And, as to the plea of the said defendant by him ninthly above pleaded, the said plaintiffs say that the supreme court of the State of Rhode Island, in the suit in equity of Isaac P. Hazard and others against Thomas C. Durant and others, mentioned in the condition to said writing obligatory, hath made orders and decrees in manner and form as the said plaintiffs have in their declaration alleged; and this they pray may be inquired of by the country.

By their attorney, EDWIN METCALF.

10. And, as to the plea of the said defendant by him tenthly above pleaded, the said plaintiffs say that the said Thomas C. Durant did not abide and perform the orders and decrees of the supreme court of the State of Rhode Island in the said suit in equity mentioned in the condition of the said writing obligatory, in manner and form as the said defendant in his said tenth plea has alleged, because they say that the said Thomas C. Durant did not, within ninety days after December 2, 1882, pay into the registry of said supreme court the sum of sixteen million seventy-one thousand six hundred and fifty-nine $\frac{97}{100}$ (16,071,659.97) dollars, as ordered by decree of said supreme court of that date, and has not performed the decree in said declaration set forth; and this they, the said plaintiffs, are ready to verify.

Wherefore they pray judgment and their debt aforesaid, together with their damages by them sustained on occasion of the detention thereof, to be adjudged to them, &c.

By their attorney, EDWIN METCALF.

30 *Joinder in Demurrer.*

(Filed June 6, 1884.)

Circuit Court United States, Rhode Island District.

ROWLAND G. HAZARD *et al.*
vs.
JOHN N. A. GRISWOLD.

And the said defendant, as to the second, third, fourth, fifth, and seventh pleas by him pleaded to the plaintiff's declaration, comes and saith that the same and each of the same and the matters therein contained, as the same are pleaded, are, in manner and form

as pleaded, sufficient in law to bar and preclude the plaintiffs from having and maintaining their said action.

And the said defendant joins in the demurrers filed by the said plaintiffs to said second, third, fourth, fifth, and seventh pleas.

ARNOLD GREEN,
SAMUEL R. HONEY,
Attorneys for Defendant.

June 6, 1884.

31 *Part of Seventh Plea.*

NEWPORT, *sc:*

Supreme Court. September Term, 1868.

ISAAC P. HAZARD *et al.*
vs.
THOMAS C. DURANT *et al.* } Bill in Equity, No. 2.

To the honorable justices of the supreme court of the State of Rhode Island within and for the county of Newport:

Isaac P. Hazard, of the city and county of Newport, in the State of Rhode Island, brings this his bill of complaint against Thomas C. Durant, Oliver Ames, Benjamin E. Bates, John Duff, Cornelius S. Bushnell, Sidney Dillon, Henry S. McComb, and "The Credit Mobilier of America," and "The Union Pacific Railroad Company," and Rowland G. Hazard.

And thereupon, humbly complaining for himself as one of the stockholders in the said defendant corporation, "The Credit Mobilier of America," as also for other such stockholders in said corporation as may become parties to this his bill of complaint, your orator says that the said defendant corporation, The Credit Mobilier of America, was created, under the laws of the State of Pennsylvania, for the purposes and with the powers fully set forth in its act of incorporation and other acts relating thereto, copies of which, marked Exhibit A, are hereto annexed and made part of this bill of complaint.

That the said defendant corporation, The Union Pacific Rail-
32 road Company, was created by acts of Congress for the purposes and with the powers fully set forth therein, copies of which said acts, marked B, are hereto annexed and made part of this bill of complaint.

That your orator from August, 1865, was a stockholder in the Credit Mobilier of America aforesaid, and from April, 1866, in the Union Pacific Railroad Company aforesaid, and since said dates, respectively, was and still is a stockholder in each of said corporations, and now owns and holds shares in the said Credit Mobilier of America of the value at par of thirty-eight thousand dollars, and shares in the said Union Pacific Railroad Company of the par value of —— dollars.

And your orator, further complaining, says that on the 16th day of August, 1867, the said defendant corporation, The Union Pacific

Railroad Company, made a contract in writing with Oakes Ames, of North Easton, in the State of Massachusetts, for certain work to be done and material to be furnished in the construction of a large portion of its railroad and telegraph line at certain prices and on certain terms and conditions fully set forth in said contract, a copy of which, marked C, is hereto annexed and made part of this bill of complaint.

That on the 17th day of October, 1867, the said Oakes Ames, by an agreement in writing between himself, as party of the first part, the said Thomas C. Durant, Oliver Ames, John B. Alley, Sidney Dillon, Cornelius S. Bushnell, Henry S. McComb, and Benjamin E. Bates, of the second part, and the said Credit Mobilier of America, of the third part, assigned said contract with the said Union Pacific Railroad Company of August 16, 1867, to the said parties of the second part in trust for various purposes, and especially stipulating that the profits arising from said contract so assigned should be paid to the then stockholders of the said Credit Mobilier of America in proportion to the shares therein held by them, respectively,
33 as fully set forth in said agreement or deed of trust, a copy of which, marked Exhibit D, is hereto annexed and made part of this bill of complaint.

And your orator avers that large profits, in addition to those before mentioned as made by said Credit Mobilier, have been made under and by virtue of said contract so assigned, and the same and portions thereof have been paid over to some or all of the stockholders in the said Credit Mobilier of America entitled to the same by the said parties of the second part named in said Exhibit D, or by such of them as continue to act as trustees, and the said defendant, John Duff, who has been substituted as trustee under said agreement or trust deed in place of John B. Alley, therein named, as your orator is informed and believes.

That your orator has received a share of said profits, and that, as he is informed and believes and therefore charges, the said defendant, Thomas C. Durant, has received from said trustee a large share of the profits arising from said contract, the same having been paid to him as a stockholder in the said Credit Mobilier of America holding a great number of shares therein, and that, as your orator is informed and believes and therefore charges, the said Thomas C. Durant has become and is now the holder and nominal owner of a large amount of the stock and bonds of the said Union Pacific Railroad Company transferred and delivered to him by the said trustees as and for a part of his share in the profits aforesaid.

And your orator, further complaining, says that the said defendant, Thomas C. Durant, was, from the early part of the year 1864 until May 18, 1867, the president of the said defendant corporation, The Credit Mobilier of America, and had to a great extent the management and control of its affairs and the confidence of the trustees and directors thereof, and was able to direct and control its funds and finances, its payments and disbursements, and that the treasurer, clerks, and agents of said corporation were in the habit of
34 paying and did pay as he directed any and all sums of money,

and upon vouchers or without vouchers, as were by him ordered and directed.

And your orator further states that the said defendant, Thomas C. Durant, had no rightful power and authority to receive from the said corporation, its officers, agents, or servants, or to cause or direct to be paid by them, any sums of money as aforesaid, except for the use of the said corporation and to be applied in and about its legitimate business.

And your orator is informed and believes and therefore charges that the said Thomas C. Durant in all instances in procuring moneys from the said corporation, its treasurer, clerks, or agents, or in causing or procuring moneys to be paid by the said corporation, its treasurer or other officer or agent, whether to himself or to any other person, represented and pretended to the directors, officers, and agents of the said corporation that such moneys were required and were to be used and were used for the benefit of the said corporation and in and about its legitimate business, and that upon such representations, which were by the said corporation, its officers and agents, believed to be true, as your orator is informed and believes, he, the said defendant, Thomas C. Durant, did, between May, 1864, and January, 1868, receive and cause to be paid to himself and other persons on his orders and by his directions, of and from the funds and moneys of the said corporation, very large sums of money, amounting in the whole, as your orator believes and charges, to more than a quarter of a million dollars, which he deceitfully and fraudulently applied to his own uses and purposes.

And your orator further says that he is informed and believes that it appears by the books and records of the said corporation kept by its clerks and servants, and that in fact the said defendant, Thomas C. Durant, procured and caused to be paid to him and to others, for his use and benefit, by the officers and agents of the said
35 corporation, and of and from its funds and moneys, the several sums of money specified in the schedule hereto annexed and marked Exhibit E and made part of this bill, and at the dates and time therein mentioned, and that the said several sums of money hereinbefore mentioned were and each of them was so procured by the defendant, Thomas C. Durant, by means of his said office of president, and upon the false and fraudulent representations and pretence that the same had been by him paid for the benefit of said corporation or in the promotion of its business or the furtherance of its interest, or were required to be paid to and for the use of the said corporation or to some person or persons having just and legal claims and charges against the same for said amounts, respectively, and that each and all of said sums were required to be paid and were paid in and about the business of the said corporation and for its use and benefit; which representations, as your orator is informed and believes, were by the said corporation, its officers and agents, believed to be true, whereas your orator is informed and believes and therefore charges that the said representations and pretences so by the said defendant, Thomas C. Durant, made as aforesaid were and each of them was false and unfounded, and known

to be so by the said Thomas C. Durant, and that each and all said sums of money hereinbefore mentioned were so procured by him with intent to defraud the said corporation, your orator, and other stockholders therein and to convert the same to his own use, and that the same were by the said defendant, Thomas C. Durant, so converted and applied to his own use.

And your orator further charges, on information and belief, that the said defendant, Thomas C. Durant, has never rendered any account showing a proper disbursement of the moneys hereinbefore mentioned or any part thereof for the benefit of the said corporation or in and about its business, nor furnished the said corporation with any proper vouchers for said moneys or of the payments thereof in its said business, nor in any manner accounted for or paid over the same or any part thereof, and that he is indebted to the said corporation in the full amount of all said moneys, with interest.

36 And your orator, further complaining, says that between October, 1864, and January, 1868, the said defendant, Thomas C. Durant, paid to the said corporation, the Credit Mobilier of America, and was credited on its books with large sums of money as paid upon his subscriptions to its capital stock or the subscriptions of other persons thereto transferred to him, and that large parcels of said stock have been by him transferred to or into the names of other persons upon the books of said corporation, and that, as your orator is informed and believes, there are now standing on the books aforesaid, in the name of the said Thomas C. Durant, 5,658 shares of said stock, of the par value of $565,800, for which he is credited upon said books with full payment therefor, and said stock is of the full actual value aforesaid, or very near to the said amount.

And your orator is informs and believes and therefore charges that a very large portion of said moneys so as aforesaid fraudulently converted or procured by the said defendant, Thomas C. Durant, as aforesaid, has been by him directly or indirectly appropriated and applied to the payments for said stock so by him held as aforesaid; and your orator is advised and therefore claims and insists that the said corporation and its stockholders have an equitable lien upon said stock of the said Thomas C. Durant to the amount of the moneys so by him fraudulently applied to payments therefor as aforesaid, and that the said stock and its proceeds are the rightful property of said corporation, the said Durant, an agent of said corporation, having, in breach of his trust, invested their moneys therein.

And your orator, further complaining, says that the said defendant, Thomas C. Durant, was active in promoting the organization of the said corporation, the Credit Mobilier of America, and that on or about the 24th day of November, 1864, he presented to the officers and agents of the said corporation a claim for forty-six thousand dollars as for so much money paid to one H. C. Crane for the expenses incident to such organization, and caused and pro-

37 cured himself to be credited upon the books of the said corporation with said amount, as your orator is informed and

believes and therefore charges, in part payment of ninety-five per cent. on five hundred shares in the capital stock of said corporation, and the same was allowed to him by and in behalf of the said corporation as and for so much money paid thereto.

That the said Henry C. Crane was and ever since has been a confidential clerk in the employ of the said Thomas C. Durant; and your orator is informed and believes and therefore charges that no sum whatever was claimed by or paid to the said Henry C. Crane for any service or disbursements in and about the organization aforesaid, and that his name, if used in any way therein, was so used for the sole benefit of the said Thomas C. Durant and by way of cover and concealment of the connection of the said Thomas C. Durant with said transaction.

And your orator is further informed and believes that the whole expenses and disbursements connected with the said preliminary organization of the said corporation as aforesaid did not exceed the sum of sixteen thousand dollars, and that at least thirty thousand dollars of the amount so claimed by the said defendant, Thomas C. Durant, and credited and allowed to him as aforesaid was falsely and fraudulently claimed, and that, at most, he was entitled only to be credited with said sixteen thousand dollars, and that he is justly indebted to the said corporation in said sum of thirty thousand dollars, with interest thereon, and that the same is an equitable lien and charge upon the shares of the said Thomas C. Durant in the said corporation to that amount, and that stock of the amount of said thirty thousand dollars, with the dividends, income, and profits upon and from stock since said pretended purchase by said Durant and which may hereafter accrue therefrom, are the rightful property of said corporation and of its stockholders.

And your orator, further complaining, says that prior to the organization of the said corporation as aforesaid and before it
38 was capable of contracting with said corporation, the Union Pacific Railroad Company, and while its said organization was in contemplation, for the purpose of aiding in the construction of said company's railroad, your orator is informed and believes that the said Thomas C. Durant, consulting and professing to act in concert with others, who subsequently became members of and stockholders in the said corporation upon its organization being completed as aforesaid, and being then vice-president of and active in the management of said railroad company, caused and procured a contract to be made between the said Union Pacific Railroad Company and one Herbert M. Hoxie for the doing of certain work in and about the construction of said railroad, for the prices therein agreed to be paid therefor.

That the said Hoxie was but the instrument and agent of the said Thomas C. Durant and had no interest in said contract and no control over the same, and never did any work under the contract or advanced any moneys therefor, but his name was used therein only as a cover and to conceal the connection of the said Durant with said transaction, he, the said Durant, representing at the time to his associates and the directors and stockholders of the Credit

Mobilier of America aforesaid and assuring them that the said contract was in truth and in fact taken and held for the benefit of the said last-mentioned corporation, and to be assigned and transferred to such corporation when it should by organization under its charter become capable to accept and undertake the same.

That, as your orator is informed and believes, prior to March, 1865, when said contract was in form assigned to and assumed by the said corporation, the Credit Mobilier of America, there had not been to exceed one hundred thousand dollars expended thereon or earned under the same, and that said one hundred thousand dollars had been advanced and paid by the said corporation, its agents or stockholders, and in its behalf and for its benefit, and not by the said Hoxie or the said Durant.

39 That on or about the tenth day of May, 1865, the said Durant presented to said corporation a claim for four hundred and twenty thousand seven hundred and seventy dollars as and for so much money due and owing upon said contract to the said Hoxie for work done, materials furnished, and expenditures made prior to the assignment thereof as aforesaid; and did falsely and fraudulently represent and pretend to the officers and agents of said corporation that said amount was justly due for actual expenditure and for money actually earned upon and under said contract prior to said assignment; and did fraudulently cause and procure said sum to be credited to him, the said Durant, upon the books of the said corporation as paid by him on that day upon and in part payment for five thousand nine hundred shares of the capital stock of the said corporation; and said sum, without lawful authority and by the fraudulent act and procurement of the said Durant, was so credited and allowed to him as and for so much money paid upon his said stock, and he has had the full benefit thereof; and your orator claims and insists that the said Durant is justly indebted to the said corporation in the full amount of said sum, with interest thereon, and that the same is an equitable lien and charge upon the shares in the capital stock of the said corporation owned and held by him, and that the said stocks so purchased by the said Durant, with all the earnings, dividends, and income, and rights thereof, is the rightful property of said corporation and of its stockholders.

And your orator, further complaining, says that on or about the 20th day of November, 1866, the said defendant Durant caused and procured to be paid by the said corporation, the Credit Mobilier of America, upon the drafts of one A. N. Gesner, sixty thousand dollars under the false and fraudulent pretence and representation that the said draft was drawn upon the said corporation for some claim or demand justly due and owing by the said corporation—

Whereas in truth and in fact, as your orator is informed and
40 believes and therefore charges, said draft was not so drawn or based on any legal claim, but was drawn and used, by direction and for the benefit of the said Durant, as a means whereby he might obtain that amount from the said corporation without consideration and to be used by him and applied to his own purposes in fraud of the said corporation and of your orator, and said sum

was, in fact, received by the said Durant without consideration and by him applied in whole or part payment for his stock in the said corporation, and said sum was, on the day last aforesaid, by his fraudulent act and procurement, credited to his stock account on the books of the said corporation, and the said Durant has had the full benefit thereof; and your orator claims and insists that the said Durant is justly indebted to the said corporation in the amount aforesaid, with interest thereon, and that the same is an equitable lien and charge upon the stock by him held in the said corporation, and that the stock purchased with said money, with all the earnings, dividends, income, and rights thereto appertaining or which have been or may be derived therefrom, are the rightful property of said corporation and of its stockholders.

And your orator, further complaining, says that he is informed and believes and therefore charges that the pecuniary condition of the said defendant Durant is precarious; that he is and for a long time has been largely engaged in hazardous speculations and financial operations, and has sustained very heavy losses and is liable to sustain other losses, and your orator is fearful that any recovery had against him could not be collected by execution or other ordinary process of law, and that the said Durant is about to depart out of the State and out of the jurisdiction of this court; that the said corporation, the Credit Mobilier of America, has earned and divided among its stockholders large dividends upon the shares in its capital stock held and owned by them, respectively, said dividends having been payable and actually paid in money and in stock and bonds of the said corporation, the Union Pacific Railroad Company, large amounts of which have been assigned to the said defendant Durant as and for his share of dividends and earnings upon
41 the stock so as aforesaid held and owned by him in the said Credit Mobilier of America, and that he has received bonds of the said Union Pacific Railroad Company as and for such dividends to a very large amount, exceeding, as your orator is informed and believes, seven hundred thousand dollars, and has also received as and for such dividends stock of the said Union Pacific Railroad Company to the amount of nearly two million dollars, a large amount of which said stock is now standing in the name of the said Durant on the books of the said last-named corporation.

And your orator claims and insists that the said corporation, the Credit Mobilier of America, and your orator and others, stockholders therein, have an equitable lien and charge upon said stock and bonds so issued to the said Durant as and for dividends as aforesaid, for any amount which may be found due from him to them, or either of them, or to the said corporation, for or in respect to the causes of action mentioned in this bill of complaint, and that such lien should be enforced by decree of this honorable court, and that the said Durant should be directed to assign and convey to said corporation all stock, bonds, and money heretofore received by him as the proceeds of said stock so purchased by him with the prope moneys of said corporation.

And your orator further claims and insists that each and all said

sums of money, shares, and stock and bonds as aforesaid are justly due and belong to the said corporation, the Credit Mobilier of America, and to your orator and others, stockholders therein, and that the said defendant, Durant, is justly indebted to the said corporation and to your orator and others, stockholders therein, in the full amount of said sum and value of said shares, stock, and bonds, and that the same are an equitable lien and charge upon said contract and agreement in the hands of the said defendants, trustees as aforesaid, and the shares, bonds, and dividends and earnings received or to be received thereon or therefrom by the said trustees to the extent of the interest of the said defendant, Durant,
42 therein, as hereinbefore fully stated and charged, and that the interest of said Durant in said agreement and trust deed and in the proceeds therefrom, so far as they purport to belong to or to be payable to the said Durant, are the rightful property of the said corporation and of its stockholders.

And your orator had well hoped that the said defendant corporation, The Credit Mobilier of America, would protect the rights and interest of its stockholders in the premises and, by proper proceedings at law or in equity, compel the said defendant, Thomas C. Durant, to account for said moneys wrongfully and fraudulently converted to his own use and withheld from said company as aforesaid, and that he would account for and pay over the same, and that said corporation would compel the said Durant to transfer all stock, bonds, moneys, and other rights and interest aforesaid procured with and by the proper moneys of said corporation to the same and to its stockholders; but now so it is, may it please your honors, that the said defendants, though requested so to do, have wholly neglected and refused to comply with these reasonable expectations and requests of your orator; all of which actings, doings, and pretenses of the said defendants are contrary to equity and good conscience and tend to the manifest wrong, injury, and oppression of your orator in the premises. In consideration whereof, and forasmuch as your orator is entirely remediless according to the rules of the common law, and can only have relief in a court of equity—

To the end, therefore, that the said defendants may, upon their several and respective corporal oaths, full, true, direct, and perfect answers make, the complainants hereby waiving said Durant's oath thereto, to all and singular the matters hereinbefore stated and charged, as fully and particularly as if the same were here repeated and they thereunto distinctly interrogated, and that not only as to their knowledge and remembrance, but also as to the best of their knowledge, information, and belief;

43 And that the said defendant, Thomas C. Durant, may come to a fair and just account with the said defendant corporation, The Credit Mobilier of America, and with your orator of and concerning all and singular the sums of money, stock and shares in capital stock, and bonds as aforesaid paid and delivered to or had or received by him as hereinbefore stated and charged, and may be decreed to pay over and deliver to the said Credit Mobilier of America and to your orator such sums of money, stocks, and shares

and bonds as aforesaid as by such account shall appear to be justly due or belonging to the said corporation or to your orator, and to make such transfer of such shares and bonds as aforesaid as shall be necessary in order to fully protect the rights of the said corporation and of your orator in the premises;

And that the amounts so ascertained to be due as aforesaid be adjudged and decreed to be a lien and charge upon the shares in the capital stock of each of said corporations owned or held by or standing in the name of the said Durant on the books of said corporations, respectively, and upon the contract assigned as aforesaid to the said defendants, trustees as aforesaid, and the dividends, earnings, stocks, and bonds received under the same, or to be received by virtue thereof, to the extent of the shares thereof to which the said Durant may be entitled under said assignment; and that on default in the payment and delivery of the moneys, stock, and bonds so found due as aforesaid all such stock and bonds be sold under the direction of this honorable court, or otherwise transferred to and apportioned among the rightful owners and claimants thereof according to equity and good conscience; and that such stock, bonds, and moneys and interest and rights so procured by said Durant with the moneys of said corporation shall be deemed and taken to be the rightful property of said corporation; and that the said defendant, Durant, his agents and servants, be restrained from selling, assigning, transferring, pledging, or otherwise encumbering any stock or bonds in either of the said corporations owned or held by him or standing in his name on the books of either corpo-
44 ration, or received or held by the said defendants, trustees as aforesaid, for his use, or to be so received or held, or any right or interest in the contract assigned to said trustees as aforesaid, or any dividends on such stocks or bonds, whether in money, shares, or bonds or otherwise;

And that said Thomas C. Durant be enjoined from receiving or disposing of any dividends now or hereafter declared upon said shares of stock, and that the said defendant corporations be enjoined from paying over or delivering said dividends upon said shares of stock to said Thomas C. Durant, or upon his request, until the further order of this honorable court, whether said dividends be money, bonds, or stock or property of any kind;

And that the said defendant, Durant, be restrained from departing out of the State and out of the jurisdiction of the honorable court by writ of *ne exeat*, issued under the seal and by the order of this honorable court;

And that the said defendant corporations, their officers, agents, and servants, be restrained from suffering or permitting any shares or bonds so owned or held by or standing on the books of said corporations, respectively, in the name of the said Durant to be assigned, transferred, pledged, or otherwise encumbered, or any dividends to be paid thereon, whether in money, stock, or bonds or otherwise;

And that said defendants, trustees as aforesaid, be restrained from paying or delivering to or upon the order of the said Durant any dividends, earnings, shares, stock, or bonds by them held or to be

held or received under the contract aforesaid assigned to them, or any pledge, transfer, or encumbrance of the same or any part thereof, or of any interest therein belonging to the said Durant or to which he may be or become entitled;

And that your orator may have such further or other relief as the nature of his case may require and to your honors shall seem meet—

45 May it please your honors to grant unto your orator the writ of injunction of this honorable court, directed to the said defendants, commanding the said Durant, his agents and servants, to refrain from selling, assigning, transferring, pledging, or otherwise encumbering any stock or bonds of either of said corporations owned or held by him or standing in his name on the books of said corporations, respectively, or received or held or to be received or held by the said defendants, trustees as aforesaid, for his use, or any interest in the contract assigned to them by Oakes Ames as aforesaid, and from receiving any dividends thereon, whether in money, stock, or bonds or otherwise, to which he may be or may become entitled; and also commanding the said corporations, their officers, agents, and servants, to refrain from suffering any assignment, transfer, pledge, or other encumbrance of the stock or bonds of the said Durant as aforesaid, and from the payment of any dividends as aforesaid; and further commanding the said defendants, trustees as aforesaid, to refrain from paying or delivering to or by order of the said Durant any dividends, earnings, stock, or bonds received or to be received under said Oakes Ames contract, or permitting any interest therein belonging to the said Durant or to which he may become entitled to be assigned or otherwise disposed of.

And also to grant unto your orator the writ of subpœna of this honorable court, directed to the said defendants, Thomas C. Durant, of Newport; Oliver Ames, of North Easton; Benjamin E. Bates and John Duff, of Boston, in the State of Massachusetts; Cornelius S. Bushnell, of New Haven, in the State of Connecticut; Sidney Dillon, of the city, county, and State of New York; Henry S. McComb, of Wilmington, in the State of Delaware, and the said Thomas C. Durant, trustees as hereinbefore stated; the Credit Mobilier of America, a corporation created under the laws of the State of Pennsylvania, and having a place of business in Philadelphia, in said State, and also in said New York; and the Union Pacific Railroad Company, a corporation created by acts of Congress, and hav-

46 ing a place of business in said New York; and Rowland G. Hazard, of South Kingstown, in Rhode Island, commanding them on a certain day to be and appear before this honorable court, then and there to answer the premises, and to stand to, perform, and abide such decree and order therein as to your honors shall seem meet.

ISAAC PEACE HAZARD.

NEWPORT, *sc:*

NEWPORT, *August* 22, 1868.

Then came the above-named Isaac P. Hazard and affirmed (on

peril of the penalty of perjury) that the statements contained in the foregoing bill are true, and that those statements therein made on knowledge and belief are true to his best knowledge and belief.

Before me— FRANCIS B. PECKHAM, JR.,
Justice of the Peace.

47 *Writ of Ne Exeat.*

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, NEWPORT, *sc:*

[L. S.] To the sheriffs of our several counties or to their deputies, Greeting:

Whereas it is represented to our supreme court, sitting in equity, on the part of Isaac P. Hazard *et al.*, complainants, *vs.* Thomas C. Durant *et al.*, defendants, that said Thomas C. Durant is greatly indebted to the said complainants and designs quickly to go into other parts beyond this State (as by oath made on that behalf appears), which tends to the great prejudice and damage of the said complainants: Therefore, in order to prevent this injustice, we hereby command you that you do, without delay, cause the said Thomas C. Durant to come before you and give sufficient bail or security, in the sum of fifty-three thousand seven hundred and thirty-five dollars, that he, said Thomas C. Durant, will not go or attempt to go into parts beyond this State without the leave of our said court; and in case the said Thomas C. Durant shall refuse to give such bail or security, then you are to commit him, the said
48 Durant, to our county jail in your precinct, there to be kept in safe custody until he shall do it of his own accord, and when you shall have taken such security you are forthwith to make and return a certificate thereof to our said court, distinctly and plainly, under your hand, together with this writ.

Witness George A. Brayton, Esq., at Newport, this 22 day
[L. S.] of August, A. D. 1868.

THOS. W. WOOD, *Clerk.*

NEWPORT, *sc:*

NEWPORT, *August 24th*, 1868.

I caused the within-named Thomas C. Durant personally to come before me, as within commanded, on the 22d day of this month, and now this writ is discharged by order of court.

WM. D. LAKE, *Sheriff.*

(Endorsed:) Writ of *ne exeat.* Isaac Hazard *et als. vs.* Thomas C. Durant *et als.* (2). Filed Oct. 21st, 1868. Thos. W. Wood, clerk.

Fees:

Service		50	
	26	61	percentage $53,235 (dollars).
		10	travel.
	$27	21	

49 Supreme Court. In Equity.

NEWPORT, *ss*:

ISAAC P. HAZARD *et als.* }
vs. } (No. 2.)
THOMAS C. DURANT *et als.* }

In the above-entitled cause it is agreed that said Thomas C. Durant shall file a bond, with surety in the penalty marked in the writ of *ne exeat* therein, to abide and perform the orders and decrees of the court in said cause, and that thereupon the writ of *ne exeat* aforesaid shall be discharged, and that the court may enter decree accordingly.

FRANCIS B. PECKHAM, JR.,
Complainants' Att'y.
CHARLES C. VAN ZANDT,
Solicitor with T. C. Durant.

Endorsed: Isaac P. Hazard *et al. vs.* Thomas C. Durant *et als.* (2.) Agreement to discharge *ne exeat* on filing bond, &c. Filed Aug. 24th, 1868. Thos. W. Wood, clerk.

50 *Bond.*

Know all men that we, Thomas C. Durant, as principal, and John N. A. Griswold and T. Dexter Bradford, as sureties, are firmly bound to Isaac P. Hazard, Rowland Hazard, Rowland G. Hazard, Elizabeth Hazard, Elizabeth Hazard, trustee; Anna Hazzard, Mary P. Hazard, Lydia Torrey, Sophia Vernon, and Anna Hornor in the sum of fifty-three thousand seven hundred and thirty-five dollars, to be paid to said obligees, their executors, administrators, or assigns; to which payment we bind ourselves, our several and respective heirs, executors, and administrators, jointly and severally, hereby.

Sealed with our seals and dated this 24th day of August, A. D. 1868.

The condition of this obligation is that said Thomas C. Durant shall on his part abide and perform the orders and decrees of the supreme court of the State of Rhode Island in the suit in equity of Isaac P. Hazard *et als. vs.* Thomas C. Durant *et als.*, now pending in said court within and for the county of Newport.

THOMAS C. DURANT. [L. S.]
J. N. A. GRISWOLD [L. S.]
S. D. BRADFORD. [L. S.]

Executed & delivered in presence of—
FRANCIS B. PECKHAM, JR.

Endorsed: Isaac P. Hazard *et als. vs.* Thomas C. Durant *et als.* 2. *Ne exeat* bond. Filed Aug. 24th, 1868. Thos. W. Wood, clerk.

51 NEWPORT, *sc:*

Supreme Court. In Equity.

I. P. HAZARD *et al.*
vs.
THOS. C. DURANT. } 2.

Thomas C. Durant, one of the defendants in this suit, having executed and filed a bond, with sureties, to abide by and perform the orders and decrees of the court made in this suit, it is now, by consent, ordered that the writ of *ne exeat* heretofore issued be discharged.

Aug. 24, 1868.

E. R. POTTER,
Asso. Justice Sup. Court.

Endorsed: Isaac P. Hazard *et als. vs.* Thomas C. Durant *et als.* 2. Order discharging *ne exeat.* Filed Aug. 24, 1868. Thos. W. Wood, clerk.

NEWPORT, *ss:*

Supreme Court. In Equity.

ISAAC P. HAZARD *et als.*
vs.
THOMAS C. DURANT *et als.* } No. 2.

Upon the motion for an injunction in said cause it is hereby ordered, and said Thomas C. Durant hereby is enjoined, until the further order of this court, from transferring, selling, assigning, pledging, or otherwise encumbering any stock or bonds of
52 either the Credit Mobilier of America, a lawful body corporate, and of the Union Pacific Railroad Company, a lawful body corporate, owned or held by him or standing in his name on the books of said corporations, respectively, or received or held or to be received or held by said Oliver Ames, Benjamin E. Bates, John Duff, Cornelius S. Bushnell, Sidney Dillon, and Henry S. McComb, trustees, as set forth in said bill of complaint, for the use of said Durant, or any interest in the contract assigned to said trustees by Oakes Ames, as set forth in said bill of complaint, and from receiving any dividends thereon, whether in money, stocks, bonds, or otherwise, to which he, said Durant, may be or may become entitled, and from receiving any dividends of any kind on any stock in either of the above-named corporations, whether said dividends be in money, stocks, bonds, or otherwise.

Entered up as an order of court this 22nd day of August, A. D. 1868.

THOS. W. WOOD, *Clerk.*

Endorsed: Newport, *sc:* In the city of Newport, in said county, on this 22nd day of August, A. D. 1868, I have this day served the within-named Thos. C. Durant with a certified copy of the within order by giving him the same in hand. Wm. D. Lake, sheriff.

Order of injunction. No. 2. Filed Aug. 22, '68. Thos. W. Wood, clerk.

Fees:

Service	0 50
Travel	10
	0 60

53 NEWPORT, *Sept. 3rd*, 1868.

In the matter of I. P. HAZARD *et al.*
vs.
T. C. DURANT *et al.*

I hereby enter my appearance as the solicitor for The Credit Mobilier of America, one of the respondents in said cause.
(Signed) WM. P. SHEFFIELD.

Newport, Sept. Term, 1868. In Equity.

ISAAC P. HAZARD *et al.*
vs.
THOS. C. DURANT *et al.* } No. 2.

And now, on this first Monday of October, A. D. 1868, we hereby enter our names as solicitors for said Thos. C. Durant in said cause, and also for the Union Pacific Railroad Company, the Credit Mobilier of America, and Oliver Ames & John Duff, for the purpose of moving the transfer of said cause to the United States circuit court, and this day duly file petition and — therefor at the time of entering their appearances.

THOS. A. JENCKES.
CHARLES C. VAN ZANDT.

54 NEWPORT, *ss*:

Supreme Court. In Equity.

ISAAC P. HAZARD *et al.*
vs.
THOMAS C. DURANT *et al.* } No. 2.

In the above-entitled cause the complainants, on the 8th day of February, 1869, move for an order that the bill therein be taken *pro confesso*, because the defendants, cited and served with process therein, have not nor has either of them filed any demurrer, plea, or answer in the clerk's office therein, although the time for so doing has not been enlarged since the day fixed for the appearance of said defendants in the premises.

By solicitor, FRANCIS B. PECKHAM, JR.

NEWPORT, *sc:*

SUPREME COURT, CLERK'S OFFICE.

In the above-entitled cause it appearing that the defendants, cited and served with process therein, have not nor has either of them filed any demurrer, plea, or answer in the clerk's office therein, and that the time for so doing has not been enlarged, and that more than sixty day- have elapsed since the day fixed for the appearance of said defendants in the premises, it is therefore, on this 8th day of February, 1869, ordered that the above complainants' mo-
55 tion be granted and said bill be taken *pro confesso.*

(Signed) THOS. W. WOOD, *Clerk.*

NEWPORT, *ss:*

Supreme Court. In Equity.

I. P. HAZARD *et als.*
vs.
T. C. DURANT *et als.* } No. 2.

And on this 9th day of March, A. D. 1869, defendants come and move the court that the order by which this bill was taken *pro confesso* be rescinded.

Per attorney, C. C. VAN ZANDT.

NEWPORT, *ss:*

Supreme Court.

In the suit
ISAAC P. HAZARD *et als.*
vs.
THOMAS C. DURANT *et als.* } No. 2.

The undersigned hereby enters his appearance herein on behalf of the Union Pacific Railroad Company.

SAMUEL R. HONEY,
Solicitor for said Corporation.

Filed Jan'y 25th, 1883.

W., *Clerk.*

56 NEWPORT:

Supreme Court. In Equity.

ISAAC P. HAZARD *et al.*
vs.
THOMAS C. DURANT *et al.* } No. 2.

Order to Commit for Contempt.

Whereas the plaintiffs in said cause, on the 22nd day of August, 1868, obtained an injunction against said Thomas C. Durant (here recite the injunction), which injunction is still in force: Now, upon

motion of the plaintiffs (filed Jan'y 5, 1870), upon notice thereon given that day, in open court and in presence of the court, to the solicitors of said Durant, that said Durant may stand committed for breach of said injunction; and upon reading said injunction and the affidavit of Rowland G. Hazard in relation to said breach thereof, said Durant being present by his counsel and offering no evidence or affidavit in the premises, this court being of opinion, upon consideration of the facts disclosed by said affidavit, that said Durant has been guilty of a contempt of this court by a breach of said injunction, doth order that said Durant, on the 17th day of February instant, do stand committed for the said contempt, unless he then show cause against such committal, and
57 unless he does then bring into this court and deposit in the registry thereof all and singular the bonds and certificates of stock in each of said defendant corporations, The Union Pacific Railroad Company and The Credit Mobilier of America, owned or held by him or standing on the books of said corporations respectively in the name or names of said Durant, his agents or servants, or of any person or persons for him or for his use, at the time of the issuing said injunction, and also especially of those shares of stock mentioned and referred to in said affidavit of said Rowland G. Hazard.

Entered up as an order of this court this 7th day of February, A. D. 1870.

THOS. W. WOOD, *Clerk.*

The above order is now modified so as to go into effect absolutely on April 7th, 1870, and it is ordered that said Durant shall, on or before that day, bring into this court & deposit in the registry thereof all and singular the bonds and certificates of stock mentioned in the above order.

Entered up as an order of this court this 4th day of April, A. D. 1870.

THOS. W. WOOD, *Clerk.*

58 NEWPORT, *sc:*

NEWPORT, *August 7th, A. D.* 1870.

I have this day served the within-named Thomas C. Durant in hand with a true and certified copy of the within order.

THOS. S. TILLEY, *Sheriff.*

Endorsed: Order to commit for contempt. Hazard *et al. vs.* Durant *et al.* 2.

STATE OF RHODE ISLAND, &c., } *ss:*
Providence, }

Supreme Court.

JULY 26TH, 1875.

ISAAC P. HAZARD *et al.* }
vs. } No. 2. In Equity.
THOS. C. DURANT *et al.* }

Motion for Leave to Purge Contempt Denied.

In the above-entitled cause it is ordered that the motion made by said Durant on the 19th last February, relative to the purging of his contempt in said cause, be, and hereby is, denied and dismissed, and that if the defendant Durant shall desire to apply to the court for an opportunity to purge his contempt in said cause, upon such terms as the court shall see fit to prescribe or accept, he shall file his motion to that effect on or before the 5th day of August next, and
59 shall file all his direct affidavits in support of said motion on or before the 23rd said August, and that the complainants shall file their affidavits in reply on or before September 10th next, and that said defendant shall file all affidavits in rebuttal in the premises on or before the 17th said September, and that said motion (if any) shall be heard and tried at Newport, on the first day of the next September term of this court, in said county of Newport.

And all questions of costs on said motion hereby dismissed are hereby reserved till further order of this court.

NEWPORT, *ss:*

Entered as the decree of court this 26th day of July, A. D. 1875.
THOS. W. WOOD, *Clerk.*

STATE OF RHODE ISLAND, &c., } *ss:*
Newport, }

Supreme Court. In Equity.

ISAAC P. HAZARD *et al.* }
vs. } 2.
THOMAS C. DURANT *et al.* }

Motion to be Purged of Contempt and to be Permitted to Defend without Being Purged Denied.

In the above-entitled cause, upon the petition of said Du-
60 rant to be purged of his contempt for violating the injunction of the court or to be permitted to defend said cause without being purged, said petition having been heard and argued by counsel; thereupon, upon consideration thereof, it is ordered, adjudged, and decreed (pursuant to the opinion of this court, dated March 10th, 1877) that said petition be, and hereby is, wholly denied and dismissed.

Entered as the decree of court July 1, 1878.
THOS. W. WOOD, *Clerk.*

Supreme Court.

ISAAC P. HAZARD *et als.* } In Equity.
vs.
THOMAS C. DURANT *et als.* }

Motion for Discharge.

On motion to discharge the defendant Durant from custody or attachment for contempt.

On this 7th day of September, 1870, the said defendant, Thomas C. Durant, having answered the interrogatories propounded to him by the complainants with regard to his alleged contempt, moves the court for a discharge from custody. By his attorney,
C. C. VAN ZANDT,
Per SHEARMAN.

61 Endorsed: Motion for discharge from custody. Sept. 7, 1870.

In the Supreme Court of Rhode Island.

ISAAC P. HAZARD *et als.* } In Equity. No. 2.
vs.
THOS. C. DURANT *et als.* }

The respondent in said cause, Thomas C. Durant, comes and moves the court to allow him to purge himself of the contempt in which he has been heretofore adjudged to be, upon such terms as may be satisfactory to the court.

C. C. VAN ZANDT,
SAMUEL R. HONEY,
Solicitors for Respondent.

Endorsed: Hazard *et als. vs.* Thos. C. Durant *et als.* Motion to purge from contempt. Filed Aug. 4, 1875. Thos. W. Wood, clerk.

62 NEWPORT, *sc:*

In Equity.

ISAAC P. HAZARD *et als.* } Nos. 1 & 2.
vs.
THOMAS C. DURANT *et als.* }

And now, on this 17th day of February, A. D. 1875, the said Thomas C. Durant comes and moves this hon. court to resume the hearing and motion to allow the said Durant to purge himself of the alleged contempt of court, and to be further heard upon a motion to dissolve the injunction granted against him by this hon. court.

He further moves this hon. court that a hearing in the premises may be granted at an early day, &c.

By his counsel, T. A. JENCKES.
C. C. VAN ZANDT.

Endorsed: Motion to purge from contempt, &c. Hazard *et als. vs.* Durant *et als.* 1 & 2. Filed Feb'y 19th, 1875. Citation returnable February 24th. Heard at Prov., before D., P. & M., July 9 & 12, 1875.

63 Supreme Court of R. I.

NEWPORT, *sc:*

HAZARD *et als.*
vs.
DURANT *et als.*
} In Equity. No. 2.

The defendant, Thomas C. Durant, moves the court that he may stand purged of the contempt for which he has been heretofore attached in this cause, or that he may be permitted, subject to any further penalty for such alleged contempt which may seem fit to this honorable court, to appear and defend the cause by demurrer, plea, answer, & proof.

And as reasons for this motion he alleges—

First. That there is nothing set forth and alleged in the bill of complaint which can authorize the court to take jurisdiction of the case and pass any order or decree therein, for the reason that there is no proper allegation in the said bill of complaint that any proper and sufficient demand or request was ever made of or to the said defendant corporations, The Union Pacific Railroad Company and The Credit Mobilier of America, or either of them to commence and prosecute suit or suits against this defendant on account of the matters and things set forth in said bill of complaint, nor in fact, as this defendant is informed and believes, was any such demand or request ever made.

64 Second. Because the defendant never did in fact receive the shares or certificates of stock of the Union Pacific Railroad Company in breach of the injunction of this honorable court, for the alleged reception of which he was heretofore adjudged to be in and attached for contempt; that in addition to the circumstances under which the said shares of stock and certificates were issued, which have heretofore been shown to the court and upon which he still relies, he alleges, and is now able to show and craves leave to show to the court, that they were not issued under the Oakes Ames contract, so called, but under another and entirely different contract, to wit, under the Davis contract, so called, and that to have received the same would have been no breach of the injunction of this honorable court, for breach of which this defendant has heretofore been adjudged in and attached for contempt.

Third. Because this defendant never was intentionally guilty of

any breach of the injunction of this honorable court, for which he has been heretofore adjudged in and attached for contempt.

Fourth. Because an examination of the record and proceedings in this case and the documentary and other evidence heretofore submitted therein, to all of which several proceedings and
65 evidence this defendant craves leaves to refer and to use the same upon the hearing of this motion, will show that if there has been any technical breach of the injunctions and orders of this court on the part of this defendant the same has occurred under such circumstances as ought not to preclude this defendant from appearing in defence of this case by demurrer, plea, answer, and proofs, as he may be advised.

Fifth. Because it is and must be in the discretion of this honorable court to allow this defendant to appear, answer, and defend this case by demurrer, plea, answer, and proofs, as he may be advised, and he prays the exercise of such discretion in his favor, because he says that he has a full and perfect answer and defence to the case upon its merits, and if he is not allowed to present the same a decree for a large amount will be rendered and stand against him, for which he is not in equity and good conscience liable, because the pendency of this suit and other circumstances beyond his control, and for which he is in no way responsible, he is not now able to comply with the condition heretofore imposed by a justice of this honorable court as a condition of being purged of the alleged contempt for which he had been attached, or with any condition which should require the giving bonds, with surety, for any
66 considerable sum or the payment of any considerable sum of money, and if by reason of such inability he should be debarred from appearing and defending this case he would be subjected to an unjust and unlawful decree.

Sixth. Because all orders, injunctions, and decrees heretofore made in this case have been made by a single justice of this court, and the defendant is advised that the same are in many respects irregular, erroneous, and contrary to equity and good conscience, and this defendant prays that the same may be duly revised and considered by a full court.

Seventh. Because, upon a full consideration of all the facts in this case and the previous proceedings therein and the present position thereof, this honorable court, sitting in equity and according to the course of equity, ought to allow this defendant to appear and defend this case by demurrer, plea, answer, and proofs, as he may be advised.

Wherefore he prays this honorable court to hear this his motion and for leave to sustain the same by reference to the record and proceedings in this case and the evidence heretofore submitted therein, and by such further evidence as he may produce under the direction of this honorable court.

And this defendant here shows unto this honorable court that upon a former motion he did not offer any terms with which
67 he was able and willing to comply as a condition of granting his prayer, because he was not advised that such offer was

proper or necessary, but he now says that he is willing to pay the complainants' taxed costs as a condition of the granting of this motion, and he submits that no further or other condition is reasonable, and shows the court, as hereinbefore stated, that he is unable to comply with any condition to pay any considerable sum of money by way of fine or to furnish any bond with surety in any considerable amount.

And this defendant disclaims any intent heretofore to disobey an order of this honorable court or any justice thereof, and assures the court of his intention hereafter to comply with all such its orders and decrees to the full extent of his ability.

And this defendant shows to the court that this motion is made in good faith and not for delay.

THOMAS C. DURANT,
By his solicitor, CHARLES C. VAN ZANDT,
By A. & A. D. PAYNE.
SAMUEL R. HONEY,
By A. & A. D. PAYNE.

I hereby certify that, in my opinion, the foregoing motion is well grounded and ought to be heard by the court, and is made
68 by the defendant, after consultation with counsel and by advice and not for delay.

ABRAHAM PAYNE,
Of Counsel.

Endorsed: In equity. R. I. supreme court. Newport, *sc.* #2. Hazard *et als. vs.* Durant *et als.* Defendants' motion for leave to defend. C. C. Van Zandt, S. R. Honey, & A. & A. D. Payne, solicitors for defendant, 43 North Main street, Providence, R. I. Left at judge's room, in Providence, Dec. 21, 1875, I think.

NEWPORT, *ss:*

Supreme Court. In Equity.

ISAAC P. HAZARD *et al.*
vs.
THOMAS C. DURANT *et al.* } No. 2.

Order of Reference to Master.

This cause came on to be heard; and whereas The Union Pacific Railroad Company, The Credit Mobilier of America, Oliver Ames, John Duff, and Thomas C. Durant, defendants, &c., have appeared in said cause, after due service of subpœnas on them, but
69 neither of them has filed any demurrer, plea, or answer therein, although the time for so doing has expired and the plaintiffs have taken an order, granted and entered in the order book by the clerk of this court, that said bill of complaint should be taken *pro confesso:* Now, upon reading said bill, it is thereupon, upon consideration thereof, ordered, adjudged, and decreed as follows: That said bill be taken *pro confesso* against all and singular

the aforesaid defendants; that said Durant shall forthwith pay into the registry of this court, to and for the use of said Credit Mobilier of America and its stockholders. all the moneys of said corporation, with interest thereon, at the rate of seven per cent. per annum, had or procured by him or by any person or persons for him or for his use, and fraudulently or wrongfully held, used, converted, or misappropriated by him or by any person or persons for him or for his use, as alleged and charged in said bill of complaint—that is to say, the following sums, with interest from the dates respectively stated with the same, to wit:

	$44,549.45	August 1, 1864.
	66,325	September 1, 1864.
	58,000	September 30, 1864.
	35,500	March 21, 1864.
	5,000	November 15, 1865.
	5,000	December 27, 1865.
70	30,081	January 25, 1867.
	25,000	March 9th, 1867.
	30,000	November 24, 1864.
	420,770	May 10th, 1865.
	60,000	November 20, 1866.

That until said payment of said moneys and interest all the stocks and bonds in each of said defendant corporations, respectively, procured in whole or in part and held by said Durant or by any person for him or for his use, whether openly or secretly, with any moneys of said Credit Mobilier wrongfully or fraudulently converted for that purpose, as alleged and charged in said bill, together with all dividends or profits accrued thereon since the same were procured as aforesaid, or to accrue thereon hereafter, however acquired or earned and from whomsoever received, whether from said defendants, trustees, or from said defendant corporation or otherwise, and whether such dividends or profits shall be or shall have been in money, stock, bonds, or property of any kind, are and shall be deemed and taken to be, so far as the same were procured and paid for with the moneys aforesaid, the property of said Credit Mobilier and of its stockholders.

That said cause be referred to James Tillinghast, Esq., as
71 master of this court, to take an account between said Durant and said Credit Mobilier and the plaintiffs (with the other defendants in said suit as far as needful) of and concerning all and singular the sums of money, in addition to those hereinbefore decreed to be paid into the registry, belonging to said Credit Mobilier had, received, and procured by said Durant or by any person or persons for him or for his use and fraudulently or wrongfully held, used, or converted, as alleged and charged in said bill, with interest thereon, at the rate of seven per cent. per annum, from the time the same were had, received, and procured.

And also of and concerning all and singular the stocks and bonds in each of said defendant corporations, respectively, purchased and

procured in whole or in part with any of the moneys of said Credit Mobilier and at any time had, owned, or held by said Durant or by any person or persons, openly or secretly, for him or for his use or standing in his name on the books of either of said corporations; and of and concerning all the profits and dividends on all said moneys, including those hereinbefore specially decreed to be paid in the registry and all others, and on said stocks and bonds, over and above said seven per cent. interest hereinbefore ordered
72 to be computed on such moneys, howsoever made, acquired, or earned or from whomsoever received, as aforesaid, by or for said Durant as aforesaid, and whether the same shall be or shall have been in money, stocks. bonds, or otherwise.

And for the better taking of said account and discovery of the matters aforesaid the parties aforesaid shall produce before and leave with the master, upon oath, all deeds, books, writings, and documents in their possession or power relating thereto, and the parties and their witnesses shall be examined as the master shall direct, for which purpose the master is hereby armed with a commission, and he shall make unto the parties all proper allowances.

And what moneys, profits, stocks, and bonds, or rights, shares, and interests therein (over and above the moneys and interest hereinbefore already specially decreed to be paid into the registry) upon the balance of said account shall appear to be due from either party to any other party or parties shall be paid, transferred, and delivered into the registry of this court to and for the use of said Credit Mobilier and its stockholders as and when said master shall direct; and said Durant and every person, openly or secretly, holding for him or for his use shall accordingly pay, transfer, and deliver, or cause to be paid, trans-
73 ferred, and delivered, all and singular the moneys, profits, stocks, and bonds, and all rights, shares, and interests therein which by such account may appear to be due in the premises, to and for the use of said Credit Mobilier and its stockholders into the registry of the court; and all the moneys, stocks, and bonds so paid and placed in the registry by virtue of this decree shall be thereupon divided and apportioned, paid, transferred, and delivered by this court to and among the rightful owners and claimants thereof according to equity.

And meanwhile, until full payment, transfer, and delivery of all and singular the said moneys, interest, profits, stocks, bonds, rights, and interests in the premises now due and hereinbefore ordered to be paid, transferred, and delivered or hereafter to be ascertained and to be ordered to be paid, transferred, and delivered as aforesaid, the same shall be a lien and charge upon all and singular the bonds and stocks, however acquired, owned or held by said Durant or by any other person or persons for him or for his use, openly or secretly, in either of said defendant corporations, or standing in the name of said Durant or of any person or persons, openly or secretly,
74 for him or for his use, on the books of either of said corporations; and, in default of such payment, transfer, and delivery into the registry, the said bonds and stocks shall be sold under the direction of this court, and so or otherwise paid and trans-

ferred to and apportioned among the rightful owners and claimants thereof according to equity.

It is further ordered, adjudged, and decreed that the injunctions and all the other orders heretofore granted in said cause shall in the meantime be continued in force.

And said master is to report herein with all convenient speed, and he has liberty to state any special circumstances and to make a separate report as to any of said matters, and he shall tax the costs of this suit, which shall be paid as and when he shall direct; and the court reserves the consideration of all further matters and directions, and any party may apply to the court as occasion shall require.

Entered as a decree of this court this 28th day of May, A. D. 1870.

THOS. W. WOOD, *Clerk.*

And said bill be taken *pro confesso.*

THOS. W. WOOD, *Clerk.*

75 NEWPORT, *sc:*

ISAAC P. HAZARD *et al.*
vs.
THOMAS C. DURANT *et al.* } Bill No. 2.

Equity Cause No. 349.

Master's Report.

To the honorable supreme court:

I, James Tillinghast, by the decree entered in said cause on the first day of July, 1878, appointed master "to inquire into the charges and allegations contained in the bill of complaint in said cause against said Durant," and, if the same or any material part thereof be found true, then to take and state certain accounts between said Durant and the Credit Mobilier of America, as directed by said decree and by the commission thereunder, herewith returned, respectfully report—

That, having been duly engaged upon said commission, I fixed a time and place for meeting the parties and issued the notice thereof, dated July 8th, 1878, hereto annexed, and at the time and place appointed and at sundry other times, to which, by the agreement of the parties appearing, the hearings were adjourned, met the parties—

76 the complainants appearing by their solicitors of record and the defendants, Rowland G. Hazard and Thomas C. Durant, in person, but no other party appearing before me.

It was agreed that the charges and allegations of the bill against said Durant should be first investigated and my findings thereon reported to the parties, and if any accounts then remained to be taken that the same should be the subject of further investigation; and, pursuant to this arrangement, at sundry times, by regular adjournments to and including August 2d, 1879, I heard the parties

and their evidence respecting these charges and allegations, and, having duly considered the same, submitted to them the following findings thereon, viz:

The Credit Mobilier of America is a corporation, originally organized May 29, 1863, as the Pennsylvania Fiscal Agency, under an act of the Legislature of the State of Pennsylvania approved November 1, 1859, and created a body politic by letters patent from Gov. Curtin, dated June 1, 1863, with a capital stock of $5,000,000, divided into 50,000 shares of $100 each, but authorized to commence business when 5,000 shares should have been subscribed and five per cent. thereon paid in. The original stock subscribed, and upon which five per cent. had been paid in, as shown by the letters patent, was 5,329, of which 2,496 shares were subscribed by
77 Oliver W. Barnes, 2,495 shares by Charles M. Hall, and the remaining 338 shares by six other persons.

In the winter of 1863 and 1864 the defendant Durant, hearing that this charter was for sale, acting through George F. Train, opened negotiations for its purchase, and March 3rd, 1864, obtained the control of it by purchasing by contract of Barnes and Hall their stocks, though on the evidence I find that this stock was never actually transferred upon the books by Barnes and Hall till November 21, 1864, when they transferred directly to Durant—Barnes transferring to him 2,420 shares and Hall 2,421 shares—Barnes and Hall together thus for the time retaining 150 shares of their original subscription; but on or before March 3rd, 1864, Durant, through Train, had also subscribed for five shares in his own name, and was, on the same day, March 1, 1864, elected president of the company, which office he continued to hold till May 18, 1867, being during all the same time also vice-president of the Union Pacific Railroad Company. The 150 shares thus retained by Barnes and Hall, together with all the other stock originally subscribed to the fiscal agency, except the 4,846 shares held by Durant, it appears by the copy from the corporation books annexed to Durant's admissions filed
78 before me, were, on May 15, 1866, surrendered to the company on the repayment by the company of the five per cent. originally paid in upon them.

But whether these 4,846 shares held by Durant were also at any time surrendered, or whether they were taken as a part of his subscription to the reorganized company, and whether he was allowed for or credited with the five per cent. that had been paid in by Barnes and Hall upon them, and whether the 75 shares each to Barnes and Hall and the 250 shares to Train, which, it seems, Durant transferred to them on November 24, 1864, were in fact in part payment of the purchase-money for the control of the charter, or were in fact full-paid stock of the reorganized company, I do not now determine, as these are all questions which can be more properly determined, so far as they arise, in taking the accounts. After this purchase of the control by Durant, by an act of the Legislature of Pennsylvania passed March 26, 1864, the name of the corporation was changed to its present name, the Credit Mobilier of America.

About this time the Union Pacific Railroad Company found itself

unable to continue the construction of its road for want of means, and about May 12th, 1864, appointed a committee to receive
79 proposals for doing the work. This committee, on the 23rd of September, 1864, entered into a contract for the construction of 100 miles of the eastern end of the road, commencing at Omaha, by accepting a proposition made nominally by one Herbert M. Hoxie, dated August 8, 1864. Hoxie, by an agreement dated September 30th, 1864, agreed to assign this contract to Durant or to any parties he might direct, and on October 4th, 1864, this Hoxie contract was extended to the 100th meridian, thus covering in all $247\frac{45}{100}$ miles of the road.

That Hoxie was but a merely nominal party to this contract, and never did any work or advanced any money under it on his own account, as charged in the complainant's bill, I am satisfied and find upon the evidence. Crane, who not only acted as the attorney of Hoxie (under either actual or assumed authority), both in making and assigning and in the extension of this contract, but who was also then the confidential clerk of Durant and the assistant treasurer, and as such the manager and acting treasurer of the Credit Mobilier, and thus in a position to know the whole transaction, says in his deposition before Sutphen that the above agreement to transact [transfer] the contract to Durant or his order was m[illegible]le for the protection of the parties who subscribed the money to go on with the work, and this accords with all the other testimony.

80 The parties here referred to are plainly the subscribers to the agreement of October 7th, 1864, by which Durant and others, together subscribing to the amount of $1,600,000, took joint interest in this contract, and even assuming that any work had been done and profits earned under the contract prior to this time, this subscription of itself would, I think, were there nothing more in the case, estop Mr. Durant from claiming these profits solely for his own use.

That these subscribers thus became entitled to all the profits accruing from the Hoxie contract, and that these subscribers were in fact the Credit Mobilier as reorganized, and that this corporation on formally assuming this contract by the agreement of March 15th, 1865, became subrogated to all the rights of these subscribers and entitled to the entire profits as against both Hoxie and Durant, I also find established by the evidence.

And that these subscribers, and consequently, as I find, the Credit Mobilier itself and its stockholders, as reorganized, were also entitled to receive the charter at its cost to Durant, I do not understand him to deny or question. In his testimony before me he states that it was "turned over to the parties in interest for the purpose of taking the Hoxie contract," and that "they received it at what it cost."

81 It follows, therefore, that the complainants are entitled to have the accounts taken respecting these matters to ascertain what sums, if any, Durant received and applied to his own use.

1st. On account of the purchase of the control of the charter over and above its actual cost to him.

2nd. For profits or otherwise under the Hoxie contract.

As to the suspense [expense] account, so called, a part of it at least, I understand, confessedly grows out of or is connected with the Hoxie contract, and is, therefore, necessarily involved in the accounts under that contract, and as to the other items of it, even if they are not also necessarily involved in the accounts under this contract, inasmuch as to determine whether or not Mr. Durant is chargeable with them is also to take the accounts respecting them, I have deemed it better to leave the whole question concerning them till the accounts are taken.

Respecting the claim upon the Gesner drafts, so called, the charge of the bill is "that on or about the 20th day of November, 1866, the said defendant, Durant, caused and procured to be paid by the said corporation, the Credit Mobilier of America, upon the draft of one A. N. Gesner $60,000, under the false and fraudulent pretense and
representation that the said drafts were drawn upon the
82 said corporation for some claim or demand justly due and
owing by said corporation, whereas in truth and in fact, as your orator is informed and believes and therefore charges, said drafts were not so drawn or based on any legal claim, but were drawn and used by direction and for the benefit of the said Durant, as a means whereby he might obtain that amount from the said corporation without consideration, to be used by him and applied to his own purposes, in fraud of the said corporation and of your orator," &c.

Now, while it is true that the complainants must recover, if at all, upon the allegations of their bill, I do not think they are to be held to the strict construction of this allegation claimed by the defendant Durant, and that they must, therefore, necessarily fail unless they prove that the drafts were actually drawn from the Credit Mobilier and directly paid by that corporation; but that, fairly construed, the charge in substance is that under cover of these drafts Durant fraudulently obtained monies from this corporation and applied them to his own uses.

The evidence establishes that those Gesner drafts were actually drawn, not upon the Credit Mobilier, but upon the Union Pacific
Railroad Company or Cisce, its treasurer, and were paid by the
83 checks of the latter company; but it also establishes that
upon the same day the Credit Mobilier paid to the railroad company an equal sum in checks of like amounts as the checks given by the railroad company in payment of these drafts. It also appears that on the same day Durant was credited with $65,000 as paid upon his stock in the Credit Mobilier; and complainants claim that from these facts it must be inferred that this stock payment was made from the proceeds of these drafts thus obtained from the Credit Mobilier through the railroad company.

Were this all there is in the case I could not accede to this view. I do not think that a grave charge of this character could be established by mere inference, from the simultaneousness of these payments; but this is not all there is in the case. These drafts were drawn ostensibly as against work upon the railroad ostensibly done

under what is known as the Boomer contracts. They were drawn by Gesner, as agent, ostensibly, of Boomer; but I am satisfied and find upon the evidence that Boomer was but a nominal party to this contract. He himself says in his affidavit of Sept. 13, 1870, "I signed a contract for grading and bridging about 150 miles of the Union Pacific railroad, presented to me by Thomas C. Durant;
84 said Durant suggested to me to appoint an agent, and named two or three persons for such agent; we agreed upon Gesner. I never did any work myself individually under said contract, nor did I ever furnish any money. Said Durant guaranteed me against any trouble or liabilities in regard to it." And Gesner being merely the nominal agent of Boomer, the evidence fails to disclose that there was any other real party contractor to it, unless it was Mr. Durant himself, who, by his endorsement at the foot of it, "became personally responsible for the payments" under it.

Upon this state of facts I cannot but find that there was in truth no contract that would be obligatory upon either the railroad company or the Credit Mobilier Company (for singularly enough upon its face it does not appear in behalf of which, if either, of these corporations it purported to be made. It is signed simply, "Thomas C. Durant, agent," and not in any official capacity; the name of neither corporation appearing in it, except as it purports to be for the construction of the portion of the railroad); and so the evidence shows it was treated by all parties. Neither corporation ever recognized it, and Crane, who was certainly in a position to know, says,
"The work went on just as if there had been no contract at
85 all;" and all payments ostensibly made under it, including the first payment under it, upon these drafts in question were afterwards, as between the two corporations, carried into the accounts under the Ames contract.

But, assuming all this, the question still remains, Did Mr. Durant, under the cover of these drafts, obtain from the Credit Mobilier and convert to his own use this $60,000? After much consideration, inasmuch as (there being, as I understand, no question of amount open) the question of liability is necessarily involved in the account, and inasmuch, as I also understand, that in taking the accounts either party will be at liberty to produce further testimony, and, as it seems to me, that further facts may be proved by one party or the other, which, if they do not include, will, at least, throw further light upon the question, I have thought it proper, after stating the conclusions I have reached upon the above matters incidentally involved, to leave the final determination of the question of Mr. Durant's liability under this charge of the bill till the accounts are taken.

Providence, October 1, 1879.

86 Pursuant to the arrangement, the foregoing findings were submitted to the parties October 1, 1879, to which time the proceedings had been regularly adjourned for that purpose, and afterwards further testimony was taken and further proceedings had respecting the accounts under them, and at sundry times, by regular adjournments to and including January 8, 1880, I further heard the

parties and their evidence upon these matters; and, having duly considered the same, now report—

1st. As to the purchase of the charter or control of the company—

The evidence shows that on November 24th, 1864, the sum of $46,000 was paid out of the treasury of the Credit Mobilier by Crane, as assistant treasurer, at New York, under a resolution of the board of directors, passed at a special meeting, called at the request of Mr. Durant, as president, held at Philadelphia, Oct. 24, 1864. It was paid ostensibly, as the resolution expresses, "for preliminary expenses of the company," and upon the evidence I am satisfied and find that it was paid to Mr. Durant. Crane, in his last testimony (deposition before Hardy, Nov. 29, 1879), when asked (Int. 314) to state what he knew about the item of $1,855.73, charged to
87 the company in Mr. Durant's account (Exhibit No. 7 C, Hardy depositions), says: "That item is the difference between the $46,000 paid by the Credit Mobilier for the charter to Thomas C. Durant and the amount actually expended in that connection." And this, though directly contradicting of what he had previously sworn to, is, in the light of other established facts, alone consistant with the only account which the evidence furnishes of the disbursement of this fund, for it is conceded that no account of such disbursement appears upon the books, that given by Crane himself in his former deposition before Sutphen (Ans. No. 5) for the $5,000 then said to have been paid to Crane, Crane himself says was the $5,000 originally paid by Mr. Durant, through Train, to Barnes and Hall upon the purchase of their stock. And as to the $40,000, confessedly and Mr. Durant's claim is that the 400 shares which Crane here refers to were taken from his stock, a part of the 4,841 shares which he purchased of Barnes and Hall, and if, as Crane here states, the $40,000 was applied to pay for the 400 shares it must have been paid to Mr. Durant as the owner of them. I can see no other explanation of this disbursement account, as here given by Crane, consistent with Mr. Durant's claim of ownership of this stock.
88 The question then is, whether Mr. Durant was entitled to this $46,000 or to any, and, if any, what part of it.

It is proved that he paid Barnes and Hall $20,000—$5,000 in cash and $15,000 in 150 shares of full-paid stock of the reorganized company; for, I think, the evidence shows, and I do not understand that the complainants question, that upon these 150 shares Mr. Durant had paid in 95 %, thus making them, with the original 5 % that had been paid by Barnes and Hall upon them, full paid.

Mr. Durant claims that this $20,000 was paid as a bonus to obtain control of the charter or franchise, and that therefore he was entitled to have it refunded to him; but, although it is spoken of as a bonus, it is admitted by him that he received for it from Barnes and Hall their 4,841 shares of stock, with the five per cent. paid upon them—that is, in value, $24,205.

In fact, the transaction, as between him and them, was not that he paid them a bonus to be let into the company as a cosubscriber with them, but was simply a purchase of so much of their stock, which, being the great majority of all that was then issued, gave him

the entire control of the company. Indeed, the evidence indicates that in this sale Barnes and Hall acted not merely for themselves, but for all the original subscribers to the fiscal agency, the $20,000 being divided *pro rata* among them; but the stock of the other subscriber, including the 150 shares retained for the time being by Barnes and Hall, and in lieu of which they received the 150 shares of full-paid stock from Mr. Durant, being afterwards surrendered. The effect therefore was to put Mr. Durant in a position to take either one of two courses in reorganizing the company: either to surrender the whole of the old stock and start the company anew by entirely new subscription, in which case, what he paid to Barnes & Hall would have been simply a bonus, which he would have been entitled to have had refunded to him, or to retain his old stock, with the five per cent. paid up upon it, and let in new subscribers.

89

He adopted the latter course, with the assent of all parties interested. As he says in his testimony: "The company was not reorganized. It was the same stock subscriptions that went on, only they paid up their five per cent. in cash, and went on." "I became a stockholder and gave it up to the company, but on this subscription was reserved five per cent. which had been paid in." And this agrees with the other evidence; and it appears that when, in March, 1865, the reorganization was completed, Mr. Durant also paid in the five per cent. upon the five shares which he had subscribed to the fiscal agency, and which he also retained as a part of his stock in the reorganized company; and while, therefore, I do not agree with the complainants, that Mr. Durant is to be charged with the whole $24,205, the five per cent. upon the Barnes and Hall stock retained by him—that he was entitled to by virtue of his purchase—neither do I think that, as against his co-subscribers to the reorganization, he was entitled, as he claims, both to have the purchase-money refunded to him and to retain his old stock, unless, indeed, he did again upon the reorganization pay in the five per cent. upon it.

90

This, however, he also claims to have done in paying to the company Train's note for $24,205, which, it appears, the company then held, representing the five per cent. upon this stock; but to this claim I cannot accede. I think that in thus paying this note Mr. Durant merely repaid to the company the money which Train had borrowed from it. That it was so borrowed conclusively appears from the treasurer's account (Exhibit 6, annexed to the Sutphen depositions), produced and put into the case by Mr. Durant himself; for while I am not satisfied that this and the accompanying account (Exhibit 5) are not forced, if not fictitious, accounts to cover the real transaction, which remains still undisclosed (there is certainly much about them intrinsically and in the light of the other evidence to cast suspicion upon them), Mr. Durant, at least, is estopped from denying them and the legitimate conclusions to be deduced from them.

91

For this $20,00 of the $46,00, therefore, I think Mr. Durant must be held chargeable, and so also for the $25,000.00 covered by the

250 shares of stock transferred to Train; for, considering the relations shown to have then existed between Durant and Train on the one hand and between Durant and his cosubscribers to the agreement of October 7th, 1864, practically, as I hold, to the company itself on the other, I do not think, as against them, he could rightfully withdraw this sum to repay himself for this stock without their assent, of which there is no satisfactory evidence.

For there is no evidence that there was the slightest foundation for any claim on Train's part against Durant for this bonus, as it is claimed to have been. Train's testimony has not been taken, and Mr. Durant merely says that Train refused to surrender the control except on these terms, but the whole evidence shows that Train had nothing to surrender; no stock, except the five shares nominally subscribed by him in March, 1864, and which he afterwards surrendered on repayment of the five per cent. upon them, stood in his name. The contract with Barnes and Hall, though made
92 through Train's agency, was evidently made for and in the interest of Mr. Durant and was finally consum-ated directly with him. The subscriptions to the $1,600,000 had been opened and in part, at least, made; and if, therefore, Mr. Durant voluntarily yielded to a claim on Train's part thus unfounded and which, in the interest of his cosubscribers, it was his duty to resist, I think that he himself must bear the loss, if, indeed, any loss really resulted from it. I therefore charge him with this $25,000.

As to the remaining $1,000 of this $46,000, I think that Mr. Durant must also be charged with that. Crane, as already shown in his last testimony, distinctly states that the whole $46,000 was paid to Durant, and while it is to be regretted that he was not asked to explain and to reconcile this with his previous testimony and with the treasurer's accounts, yet under the then very intimate and confidential relations existing between these three parties—Durant, Crane, and Train—the burden of the explanation is upon them. I do not overlook that it is claimed that there had been sundry incidental expenses which Mr. Durant had advanced, but Crane's disbursement account shows that these were outside of the $46,000, and so Mr. Durant now claims, claiming to add $1,855.73 to his
93 general account for them besides, too, Crane gives $965.25; as paid for these expenses, and if Mr. Durant had previously advanced them, this amount, like this $5,000, must have been paid to him, to say nothing of the other amounts alleged to have been paid on Train's account.

But further respecting this whole $46,000. Mr. Durant, in his proposed answer, filed and used as an affidavit in the case, states that it was paid from the $47,500 that he, on the same day, paid into the company for the 95 % upon the 500 shares of his stock, of which he proves that these 400 shares transferred to Barnes and Hall and Train formed a part, and there is nothing to show that this payment had any connection whatever with the payment that he says he made upon Train's note. True, this is entirely inconsistant with Hall's treasurer's account, Exhibit 5, annexed to the Sutphen depositions; but at this time all the transactions of the

company were in New York, where the regular books were kept by Crane as assistant treasurer. Hall, though nominally treasurer, was in Philadelphia and had no direct personal connection with the transactions themselves, and this account, if indeed made by Hall at all, must have been made on information received from New York.

94 The same, however, cannot be said of the former account, Exhibit No. 6; that relates to transactions before the removal of the company's office from Philadelphia, and with which Hall as treasurer had direct personal connection.

My conclusion, therefore, is that Mr. Durant must be charged with this whole $46,000, with interest from the date of its payment, November 24th, 1864.

II.—*The Hoxie Contract.*

As the case stood at the former hearings, I reached the conclusion that Hoxsie was but a nominal party to this contract, and that the subscribers to the $1,600,000 agreement of October 7th, 1864, and the Credit Mobilier, by subrogation under these subscribers, on formally assuming it upon their reorganization, in March, 1865, became entitled to all its benefits.

Mr. Durant has since introduced further evidence on these matters, as the result of which, in connection with that previously in the case, he claims that it is now conclusively established that, as between him, as the assignee of Hoxsie, and his cosubscribers, the latter had nothing whatever to do with this contract prior to December 1st, 1864, nor can he be held accountable for any moneys received under it accruing prior to that date.

95 But, after a careful reconsideration of all the evidence, I am unable to concur in this view or to see any reason for changing my former findings in this respect. These findings did not at all rest, as he supposes, upon the question whether this contract was accepted by the railroad company in August or September, or upon the question when the subscriptions or payments under the agreement of October 7th were actually made. Assuming that these questions might have become material as between the subscribers and Hoxsie (not himself a subscriber) had it been shown that he was the real party in interest, I cannot regard them as at all material as the case now stands, and the new evidence but makes it more clear, I think, that Hoxsie had no such real interest.

I am satisfied *to* that the contract had no real validity prior to its being taken up by the subscribers to the agreement of October 7.

96 In fact Mr. Durant practically concedes this in his testimony before the congressional committee; but he now claims that this agreement did not go into effect as between himself, as the assignee of the contract from Hoxsie, and his cosubscribers until December 1st, resting this claim chiefly, if not entirely, as I understand, upon the fact that they made no payments under it until after that date.

But, as I have said, I deem it, as the cause now stands, of no consequence when these payments were actually made. As towards his cosubscribers, Mr. Durant had at once in hand as cash, by force of his own subscription, $150,000, the amount of his 25 per cent. under it, and was entitled to call upon the others whenever he chose. And, although he claims that in the meantime he made large advances on account of the work under the contract, the accounts he now produces from his own books show that he also during the same time received large sums of money on account from the railroad company, and that the balance of this entire account of advances, covering not only the whole time of this Hoxsee contract, but sweeping back even to the time of his original purchase from Barnes and Hull, was carried into his special account under this Hoxsee contract with the Credit Mobilier as advanced by me to this company. (See Exhibit No. 9, Calhoun, and Statement No. 8, accompanying it, annexed to the Hardy depositions.)

97 And these accounts also show that other advances made by him under this contract prior to December 1st—*e. g.*, currency sent to Omaha, October 12, and cash "to H. C. Crane, agent," Oct. 1st, as advances to company (Statement No. 4), and drafts of Hoxsie, for oxen, in July and August, 1864 (Statement No. 6)—were charged to this company.

This last is particularly significant, in connection with the concluding clause of the Hoxsie contract, and certainly these charges had no place in this account unless the interest of the Credit Mobilier in the railroad work related back to the same time; otherwise, plainly the effect of so commingling the accounts was to make the Credit Mobilier repay him, through this special account, advances made to the railroad company prior to the time when the Credit Mobilier had any connection whatever with the contract.

It now appears, significantly, too, for the first time in the repeated investigations of this matter, that as early as October 21st, 1864, Mr. Durant took to himself from Hoxsee an absolute assignment of all his remaining interest under this contract, taken, as he says, to protect himself as against the railroad company for his advances in carrying on the work. Passing the question whether, being then vice-president of the railroad company, he could thus secretely assume the relation of contractor to it, and whether, had there been no intermediate dealings with this contract, the effect of this assignment would not have been that he took it in trust for that company, and thus practically have merged it altogether,

98 it is evident upon the plainest principles that as he himself then held the prior agreement from Hoxsie, of September 30th, under and upon the faith of which he had obtained the subscriptions to the agreement of October 7 for the purpose, as he testifies before the congressional committee, of taking the contract off Hoxsie's hands, he must be held to have taken this last assignment under that agreement and in trust for these subscribers, and thus to have merged in them all rights and benefits that Hoxsie had or might be supposed to have reserved. As against them and as against the Credit Mobilier holding under the subsequent assignments to itself

and Duff of March 15th, 1865, upon the faith of which Durant was active, if not chiefly instrumental, in procuring the reorganization of the company to carry on this work without disclosure on his part of this prior assignment to himself, he certainly cannot set it up to claim under it any exclusive benefit for himself, particularly in view of the direct representations to the contrary that he is shown to have made to several of the subscribers at the time.

I have dwelt more at length upon these matters, as it is upon the relations of the parties under this contract that the remaining questions of the liability of Mr. Durant chiefly turns.

The complainants claim that he is liable under it for the following sums:

99 First. $400,000, the 25 per cent. upon the $1,600,000 subscription under the agreement of October 7th, 1864.

Second. $308,000 or $304,874.45, the amount said to have been paid or to have been due to Hoxsie under the alleged adjustment of the amount due under his contract December 1st, 1864, as adopted by the railway bureau April 27, 1865.

Third. $429,719.35, the whole estimated amount of the Hoxsie contract to December 1st, 1864, which these complainants claim the evidence shows that Mr. Durant also secured in addition to the other amount.

Fourth. $168,874.45, the amount charged for extra work under the Hoxsie contract in the engineer's certificate of December 31st, 1864.

These several claims require separate examination.

First. As to the $400,000.00.

The complainants' claim respecting this in effect is that Mr. Durant received from the other subscribers the 25 per cent. upon their subscriptions and converted the amounts so received, less such amounts, if any, as he expended upon the railroad work to his own use; and as to his own subscription, that nothing, in fact, was ever paid in upon it, and that in the reorganization — the subscribers Mr. Durant himself had credit for the entire amount of this 25 per cent. as so much paid on their stock in the new company.

And these facts, I think, are fully established by the evidence, except as to a portion of his own subscription, as hereinafter stated.

100 Mr. Durant produces (Exhibit No. 3, Hardy depositions) what purports to be an account of the payments under this subscription, but I do not understand him to claim that it is a full account. He says that it is brought down only to March 3d, 1865. Gray's payments, as shown here, amount only to $25,000, while Mr. Durant in his last printed affidavit states that he had received from Gray $110,000. Adding this additional $850,000 to the $160,000 shown to have been received by this account and $150,000 for Mr. Durant's own subscription, which (having been allowed to him upon his stock) must be taken as cash in his hands, makes a total amount of $395,000.

Mr. Durant also testifies that McComb, whose name is not upon this account at all, paid *paid*, he thinks, in May or June, 1865. True

he does not say directly that it was paid to himself, but that is the fair inference, as he does not state to the contrary, and it appears from Gray's case that he did receive payment on these subscriptions after March 3d. In view of this and his repeated admissions before the congressional committee, and of the fact that it is in his power, by stating the full account, easily to remove any doubt respecting it, I feel justified in holding him accountable for this whole $400,000. Indeed, if McComb paid his subscription in full, which, in absence of any statement by Mr. Durant to the contrary, might almost be presumed, the amount considerably exceeds that sum.

101 Nor am I satisfied that any part of this amount was ever expended upon the railroad work, or, at least, if any part of it was temporarily so used, it seems to have been wholly repaid to him from some other sources. In his Exhibit No. 9, with the accompanying statements annexed to the Hardy depositions already referred to, Mr. Durant gives from his books a full account of his advances to the railroad company from March 31st, 1864, to April 29th, 1865, the entire amount of which, as shown by the credits, was repaid to him by sundry payments from the railroad company, and by the balance being charged to his special account under the Hoxsie contract with the Credit Mobilier, and neither upon the latter account nor upon his general account with the company (Exhibits No. 6 and 10, Hardy depositions) are there any credits of the amounts received from these subscribers. It appears also from Exhibit E No. 3, annexed to Mr. Durant's proposed answer, filed as an affidavit, that the railroad company itself expended other large amounts during this time.

As to Mr. Durant's own 25 per cent., it also appears that down to May, 1865, the books show only 75 per cent. paid in upon his stock, with the exception of 500 shares upon which the $47,500 was paid, thus paying these shares up in full, as before stated.

102 As this $47,500 must have been paid upon his original subscription, and as I charge him with the $46,000, which he says was paid out of it, I think he is entitled to be credited with this amount as against the $400,000.

The only other stock payment by him which, upon the evidence, the books disclose, except the 5 % upon his original five shares, is the $65,000 paid in on November 20th, 1866; but, in the absence of any evidence to what stock this applies, I cannot assume that it was paid on his original subscription.

The result, therefore, is to charge Mr. Durant under this claim with the $400,000 less $47,525—that is, $352,475, with interest from March 9th, 1865, which I take as the average date, treating the balance of his own subscriptions as due March 20th, 1865, when his first stock settlement of any amount seems to have been made, and Gray's and McComb's as due May 11th, 1865, when Gray's stock seems to have been issued to him.

Second. As to the $308,000 or $304,874.45 under the adjustment of December 1st, 1864.

Third. And with these may also be taken the complainants' third claim of $429,719.35, as they are all connected together.

I see no evidence that Mr. Durant received more than one of these amounts under this adjustment, but that he did receive the $308,000 I find is fully proved, and, indeed, conclusively appears from the account produced from his books, Exhibit No. 7, Hardy depo-
103 sitions. He here charges the contract and credits himself with this entire amount, and credits as received against it from the railroad company $136,000 (which were plainly the same payments charged at the same dates in said Exhibit E No. 3, annexed to his answer, as paid by the railroad company to Hoxsee "on ac. work under contract"), and the balance, $172,000, was charged to the Credit Mobilier in his special contract account and was paid to him through that account; and finding, as I do, that this entire amount of $308,000.00 was for estimated profits under this contract, I charge Mr. Durant with it, with interest from March 20th, 1865, as above. The fact that $136,000 of it was paid to him directly from the railroad company and not through the Credit Mobilier can make no difference. Receiving it as profits under the contract, he received it for the company, and even were it not all profits he charged it distinct from his other advances, which were all repaid to him, as before stated.

The $394,874.45 is plainly the sum of the payments to Hoxsie down to January 1st, 1865, as shown by said Exhibit E No. 3, annexed to Mr. Durant's proposed answer, but why it was interpolated by him into the alleged copy of the adjustment as contained in his last affidavit I find no explanation. It certainly, as it stands there, explains nothing and only tends to confuse. It is made up of the above $136,000 and of the $168,874.45 presently to be considered.

The $429.719.35, as given by Ham in complainants' printed
104 testimony, p. 37, is, as I understand, but the statement of the entries upon the "books of the contract" (that is, the books of the Hoxsie contract, not of the Credit Mobilier) of this same adjustment account, and does not show a distinct payment to Hoxsie—that is, to Durant of this amount as claimed by the complainants; and this, I think, is made entirely clear by Mr. Durant's special contract account (Exhibit No. 9, Hardy depositions) already referred to, which, it will be found by comparison, credits to the company all the sums here stated by Ham to be found charged to him upon the company's books, with an additional credit of $28,500, which may or may not include the $26,348.77, which by Ham's account does not stand specially charged to Mr. Durant.

Fourth. The $168,894.45 charged for extra work in the engineer's estimate of December 31st, 1864.

That this was a false estimate of work never done and put in to cover expenditures in Washington is conclusively proved, and that it embraces the first four items of the suspense account, so called, being the four items of the same amounts charged in the account of the railroad company's expenditures (Exhibit E No. 3, Durant's answer) as paid to Hoxsie "as work under contract," is admitted, and that these sums were payments received by Mr. Durant from the railroad company is also fully proved, though he claims to have paid them out for its accounts; but whether he did pay them

105 out or not and whether, if he did, they were properly or legitimately expended as against the railroad company is not the question here; for, assuming that he may be accountable for them to that company, it gives this company, the Credit Mobilier, no claim now to recover them of him unless it also has paid them out or otherwise lost them; that it has not lost them through their being originally credited to the railroad company as payments under this contract I think is clear.

The account in which they were included, though nominally adjusted by the $2,000,000.00 note, still remains unsettled and in litigation, and both parties repudiate the adjustment and have carried these items into a suspense account. If, therefore, they were wrongfully credited to this contract the amount still remains due from the railroad company.

But an examination of Mr. Durant's account with the railroad company above referred to (statement No. 8, Exhibit 9, Hardy depositions) shows, as I understand it, that these same items are there also included, and thus not only swell that account, but exceeds in amount its entire balance of $107,525.68; he therefore has received again from the Credit Mobilier through this account, and for this amount thus received, of $107,525.68, I charge him on account of this claim, with interest from March 31st, 1865, the date when this balance seems to have been struck and carried into his special contract accounts.

106 III.—*The Suspense Account, Exhibit E of the Bill.*

The first four items in this account are disposed of in the foregoing.

Of the other items the facts respecting that of January 25, 1867, for $30,081.67, I find to be that this amount was paid out by the Credit Mobilier to take up a note of the railroad company held by Maxwell and Graves, with whom the railroad company had deposited $35,000.00 of Government bonds as collateral to it; that on payment of the note these bonds passed into the hands of Mr. Durant, who used them as collateral for money borrowed by him. He claims on the same day to have advanced $25,000.00 to the Credit Mobilier, and in his general account with that company (Exhibit No. 6, Hardy depositions) there is that sum charged; but if this was the money he borrowed upon these bonds, of which there is no direct proof, it was repaid to him through this account, and I find no evidence that he has ever accounted to either company for the bonds themselves, nor, though the proof respecting them has long been in the case, does Mr. Durant now give any account of them. The complainant claims that he should be charged with the total amount of the bonds; but, as he was then also vice-president and general manager of the railroad company, the bonds properly passed into his custody, and I do not think that the Credit Mobilier should be held liable for them, although it cannot recover the amount of the note from
107 the railroad company without surrendering them; and this amount Mr. Durant was bound to see repaid to the Credit

Mobilier out of them; and having, as the proof stands, converted the bonds to his own use, I charge him with this amount, $31,081.67, with interest from January 25th, 1867, the date of its payment.

As to the remaining items of the suspense account, the evidence shows that they were paid out by the Credit Mobilier for the railroad company. Some of them, as the $30,000.00 and the $5,500, would seem to have passed through Mr. Durant's hands, but as to the two items of $5,000 each there is no evidence of how they were paid; as to the $25,000, it was proved that it was paid with the express approval of Mr. Durant, but to Bushnell, whose receipt for it is produced (Exhibit No. 1, Sutphen depositions) and who admits that he received it, but claims to have paid it out in the interest of the railroad company.

The complainants claim that these alleged payments for the railroad company were illegal or for improper purposes, and that, aside from any question whether or not Mr. Durant received and applied the money to his own use, he, as president of the company and as then having and exercising a large if not a controlling influence in its management, must be held personally accountable for their proper disbursement, at least where shown to have passed through his hands or to have been paid out with his knowledge and approval, and that, having this burthen upon him, he has failed to show
108 any proper application of these moneys; but I do not understand that this question of Mr. Durant's official liability is open before me under this bill & decree. By the decree I am instructed to take an account only of such moneys of the company as were had, received, or procured by Mr. Durant or by any person for him or for his use, and fraudulently or wrongfully held, used, or converted, as alleged in the bill—that is, for his own use and benefit; and, therefore, whatever might be my conclusions were the question of his official liability properly before me, as I find no evidence that Mr. Durant or any one for him had any use or benefit of these sums so as to make him now accountable for them or either of them, I do not find it necessary to enter upon the enquiry so fully discussed by the complainants, of their proper disbursement as between him and the railroad company.

IV.—*The* $60,000 *Claimed in Connection with the Gesner Drafts under the Boomer Contract.*

Since the formal hearings and findings the complainants have introduced no new evidence throwing any additional light upon this matter, and (the question of Mr. Durant's official liability not being before me) as I find no evidence connecting Mr. Durant with the payment made by the Credit Mobilier to the railroad company here complained of, nor any evidence either that he received this money or any benefit from it, or that it formed any part of the amount
109 upon the same day paid in upon his stock, I do not think that he can here be charged with it.

It remains to consider to what, if any, credits or balances upon

his general account Mr. Durant is entitled as against the sums now charged to him; for, although I do not understand that by the decree under which I am acting I am instructed to take the general account between him and the company, yet if the company is indebted to him upon that account he might be entitled to offset such indebtedness.

It appears that in the latter part of May, 1867, after Mr. Durant's official relations with the company had terminated, both Ham and Crane made up this account with the object, as Crane says, of settling it, if possible. By Ham's account, made from the books of the company, which, it must be borne in mind, had also heretofore been kept by Crane, Mr. Durant was found indebted to the company $33,041.40, while by the account as made up by Crane there was a balance in his favor of $9,405.99.

As to the difference between these accounts there is no dispute. They consist of $62,500, salary; $14,027, interest, and $30,920.28, cash balance at Omaha, charged to the company in Crane's account, which had never been entered upon the company's books, and $65,000 for stock returned, credited to him by Ham, which was
110 not in Crane's account.

As to the $62,500, it is due to Mr. Durant to say that it is claimed not so much as salary as compensation for services alleged to have been rendered outside of his official duties as president, and he has introduced considerable testimony to prove the efficiency and value of these services. But, even were these services conceded, I do not think that this claim can be allowed; for, as a general principle, I do not understand that an officer of a corporation is entitled to compensation either as salary or for special services (which, as a general rule, are presumed to have been rendered officially) in the absence of any by-law or contract providing for it, of which, in this case, I find no satisfactory evidence. The testimony respecting the informal discussion concerning it is more than counterbalanced by the fact that no formal action was taken; that the salary was never charged upon the company's books; that the services were rendered, as Bushnell says, as well for the railroad company as for the Credit Mobilier, and that Mr. Durant as an officer and stockholder had then a large personal interest in both companies.

As to the balance at Omaha, I do not see how this fund can be claimed to have belonged to Mr. Durant. I have already referred to his special contract account, by which it appears that all his advances were repaid to him. But, if I understand this account
111 and its accompanying statements correctly, not only does this appear from them, but a comparison of them with the engineer's certificate and the alleged adjustment of accounts of December 1st, 1864, and with Cisco's treasurer's receipt and Ham's statement of the account and trial balance as taken from the books of the Hoxie contract, also shows that all the moneys by these latter shown to have been expended by "the company" and by the "assignees of the contract" passed through this special account of Mr. Durant, thus showing that all these dealings were then regarded by

him as on account of the company. Indeed, Mr. Durant, in his testimony before me, says that this $74,542 appearing in the adjustment account "was expended by the assignees under the $1,600,000 subscription, as appears by the settlement."

If this was so, whatever remains on hand at Omaha belonged to the company; otherwise, and if this was not so understood at the time, it is difficult to see why (Crane keeping all the accounts for more than two years afterwards) this cash balance was not credited to Mr. Durant upon the company's books.

This also disposes of the item of $15,000, which Mr. Durant in his supplemental account now filed (Exhibit No. 7) claims should be added to the cash balance at Omaha. Besides, too, I think that the preponderance of testimony clearly is that this was after-
112 wards paid out for the previous work.

The other items of this supplemental account are—

First. For shanties and tools, $30,745.23.

This is claimed as the amount of an inventory which is not produced and respecting which the testimony is vague and unsatisfactory. Ham says respecting it: "My impression in regard to the matter is that the stuff was all paid for by checks at Omaha—all the stuff that was there—at its full value;" and we find in Mr. Durant's special contract account, Statement No. 11, $13,000 charged by him to the company as paid J. E. Henry, in July, 1865, for lumber, tools, and shanties; and he also now credits in his general account (Exhibit No. 10, Hardy depositions) $13,000, which he admits was received (though in part payment, as he claims) for this same property; but, aside from this, and for the reasons above stated, this property also, if on hand, belonged to the company and not to Mr. Durant.

As to the last item of the account, $65,000, it is the same that Ham in his account credits to Mr. Durant, and, though thus credited, the balance of the account is still against him, though, if this were otherwise, there is a further reason why this item should not be taken into account here. It, with the dividends connected with it, is involved in a suit by Mr. Durant against the company, pending elsewhere.

As to the remaining items of $1,855.73 and $6,900, it is unnecessary to consider them, as it is evident that, if allowed, they
113 would not change the balance of the account in Mr. Durant's favor, in which case only have I anything to do with it; besides, as shown above, he now admits an additional credit of $13,000 received in July, 1865, which is not upon his books and which was not in either Ham's or Crane's original account.

The result is that I find Mr. Durant charg-able with the following sums, with interest from their respective dates, at 7 per cent. per annum, as instructed by the decree, viz:

			Interest.
1884, Nov. 24	For am't rec'd for alleged purchase of charter	46,000	50,062 05
Average date, 1865, M'ch 9	" " " ac. subscription under agreement of Oct 7, 1864	352,475	376,404 14
1865, M'ch 20	" " " under Hoxie's contract	308,000	328,242
1865, M'ch 31	" " " on ac. of the first four items of the suspense account	107,525 68	114,365 39
1867, Jan'y 25	" " " of this item of the suspense ac.	30,081 67	28,169 81
		844,082 35	897,243 39
1880, June 11	Amount with interest at 7 per cent. to date of this report	1,741,325 74	

I am also instructed by the decree to take an "account of and concerning all and singular the stocks and bonds in each of said defendants corporations purchased wholly or partially with the moneys of the Credit Mobilier and had or held at any time by said Durant, or by any person openly or secretedly for him or for his use, and of and concerning all profits and dividends on all
114 said moneys, stocks, and bonds over and above said 7 per cent. interest, however acquired and paid, whether in money, stock, bonds, or otherwise."

The complainants claim that, as the amount with which Mr. Durant is found charg-able exceeds the total amount of his stock in the company, his whole stock should be considered as having been purchased with these moneys, and that the account under this clause of the decree should be taken accordingly; but to this I cannot agree. Plainly, the 5 per cent. originally paid upon his Barnes and Hall stock was not paid from the moneys of the company, nor was his own first payment of $47,500 upon the 500 shares.

But, as he retained 100 shares of this 500 and *and* as I find that the amount paid on these was wrongfully repaid to him in the $46,000,

I consider this as invested in this stock	9,500
I also find that the rest of the 25 per cent. upon his subscription with which I charge him was allowed to him directly upon his stock	102,475
And the books show that the two payments to him of March 20th, 1865, of	302,770
And of May 16th, 1865, of	118,000
Were also turned in directly on his stock, making a total of	532,745

Equivalent to 5,327.45 shares of his Credit Mobilier stock, which I find was purchased with its money.

I find that dividends and allotments have been made upon
115 this stock and received by Mr. Durant as follows:

April, 1886, 50 % in the R. R. Co.'s stock at par		266,372 50
Sept. " 50 % " " " " " "		266,372 50
Dec. " 100 % " " " " " "		532,745

In February, 1867, the Credit Mobilier increased its stock one-half, the stockholders paying for the same and securing also a like amount of the R. R. Co.'s first-mortgage bonds. The complainants claim that Mr. Durant should be held to have purchased this new stock from the moneys which he is found then to have been indebted to the company; but I do not think that I can infer this, even was it clear that I could properly do so under the decree; but the bonds, having been given as a bonus because of his old stock, I think that they must properly be regarded as a dividend or allotment upon it.

They amounted to		266,372 50	
Dividend of Dec. 12, 1867, payable Jan'y 3, 1868, 60 % in the R. R. Co.'s stock & 60 per cent. in the R. R. Co.'s first-mortgage bonds		319,647	319 647
Dividend of Dec. 28, 1867, 12 % in the R. R. Co.'s stock, @ 30, equal 40 % in stock at par			213,098
Dividend of Jan'y 3, 1886, 20 % in the R. R. Co.'s first-mortgage bonds		106,549	
Dividend June 17th, 1868, 40 % in the R. R. Co.'s stock			213,098
Dividend of July 3d, 1868, 75 % in certificates for R. R. Co.'s first-mortgage bonds		399,558 75	
116 Dividend of Dec. 28, 1868, 200 % on the R. R. Co.'s stock			1,065,490
Also cash advances:			
June 17, 1868, 60 %	319,647		
July 8, 1868, 30 %	159,823 50		
	497,570 50	1,092,127 75	2,876,823

The complainants claim that the income bonds and the stock of the railroad Co., which Mr. Durant has [is] shown to have purchased under the trustees' circular of Sept. 22d, 1869 (Congressional Committee's Report, p. 637), should be taken into the account; but I do not think so. This purchase, though one Mr. Durant was enabled to make by virtue of his being a prior stockholder in the company, must, I think, be regarded rather as a new investment than as profits upon his original stock, within the meaning of the decree under which I am acting.

I find, therefore, that Mr. Durant has received as profits and div-

idends upon the $5,327\frac{45}{100}$ shares of stock which he purchased with moneys of the Credit Mobilier as follows:

Of Union Pacific railroad stock at its par value	2,876,823
Of said R. R. Co.'s first-mortgage bonds at their par value	1,092,127 75
In cash	497,570 50

117 I also find that these bonds had thirty years to run and bear interest at the rate of six per cent. per annum, payable semi-annually, in gold, on the first days in January and July in each year, and that this interest has always been regularly paid to the present time, and that said railroad Co. has paid dividends upon the par value of its stock in currency as follows: July 1st, 1875, 1½ per cent.; Oct. 1st, 1875, and Jan'y 1st, April 1st, July 1st, and Oct. 1st, 1876 and 1877, 2 per cent. at each date; Jan'y 1st and April 1st, 1878, 2 per cent. each; and Oct. 1st, 1878, and Jan'y 1st, April 1st, July 1st, and Oct. 1st, 1879, 1½ per cent. at each date.

I also, as requested by Mr. Durant, return as a part of my report the testimony and depositions taken and used before me, Mr. Durant's testimony before the Wilson Congressional Committee, as reported in the document- on file, being also used by agreement of both parties with the same effect as if the stenographer who reported it had been called and had verified it as witnesses here.

PROVIDENCE, *June 11th*, 1880.

The foregoing, as a draft report, was submitted to the parties June 11th, 1880, to which time the proceedings had been regularly adjourned for that purpose, and, by agreement, July 26th was fixed as the time for filing objections to the same, and an adjournment was taken to August 5th for the hearing upon such objections.

118 At the time appointed both the complainants and Mr. Durant filed objections, which I herewith return. On August 5, 6, and 27 they were fully heard upon these objections, and, after considering the same, I find that the report should be modified in the following particulars:

First. As to the amounts chargeable to Mr. Durant under the Hoxie contract.

The accounts as [are] differently stated and the evidence on these matters are exceedingly confused and complicated.

Both parties now claim that the draft report erroneously confounds the $168,874.45, extra work in the December estimate, with the first four items of the suspense account, aggregating the same amount, although both have hitherto conceded their identity, the complainants in both their arguments, F and G, and Mr. Durant in his affidavit; and, after a careful consideration, I cannot doubt that in thus conceding it they were right, and that the report in this respect is correct, for I think that the evidence establishes that this amount as for extra work (never done) was added to the December estimate for the purpose of including and covering under this con-

tract and thus bringing into the Credit Mobilier accounts these payments represented by these four items of the suspense account, which had been previously made to Durant by the railroad company for outside expenditures at Washington. Not only have Durant and Crane both so testified (though the latter, it is true,
119 in an answer objected to as irresponsive), but to the same effect also, as I understand it, taken in connection with the other evidence, is Hoxsie's affidavit (C. P. T., p. 14), the only other testimony directly relating to this matter.

But I am now also satisfied that Mr. Durant must be charged with the whole of the $168,874.45 instead of with the balance only of his Statement No. 8 (Hardy depositions), $107,525.68, as found by the draft report. On re-examination of it, I think, as claimed by the complainants, that the account given by Ham (C. P. T., pp. 36–38) of the payments to Mr. Durant, as taken from the Credit Mobilier books and as accounted for and balanced upon the books of the contract, shows that Mr. Durant did receive in these payments, directly from the Credit Mobilier, not only the $308,000.00 estimated profits, but also the entire amount of this $168,874.45, extra work, and I therefore charge him with it, with interest from August 15, 1865, assumed as the average date of its payment to him, the earlier payments to him being covered by his current disbursements.

But I cannot agree with the complainants that the accounts which Mr. Durant produces from his own books (Hardy depositions) show that he has received this same amount a second time from the Credit Mobilier. True, I find, as stated in the draft report, that it is there charged in his account with the railroad company (Statement No. 8), and this swells, or rather creates, the balance of that
120 account which he charges to the Credit Mobilier in his special contract account, but it is here again balanced and accounted for by the same payments charged to him in Ham's account.

The complainants, however, further claim that he should be charged with this amount a second time, because he had again received it from the railroad company (not from the Credit Mobilier, as the Complainants' Argument H seems to erroneously assume) in the $304,874.45, and were I satisfied that he had so received it as profits under the contract I think that this claim would be well founded; but I am not so satisfied. True, the effect of Mr. Durant's affidavit in interpolating this $304,874.45 into the railway bureau adjustment account seems to be to credit the whole amount of it as against these profits; but I do not think that this is its necessary effect, so as to conclude him against the fact, and on the evidence I find the fact to be that these four payments, aggregating the $168,874.45, were made to him by the railroad company not for profits under this contract, but for moneys expended or claimed to have been expended at Washington.

But these complainants still further claim that he should be charged a second time with this amount because these payments were carried into the accounts as payments under the contract in the adjustment between the two companies, in March, 1867, and then allowed

120½ to the railroad company; but, for the reasons indicated in the draft report, I cannot adopt this view. I am unable to see that either company is bound by this adjustment, or that through it the Credit Mobilier has so lost these sums as to entitle it to now recover them from Mr. Durant.

If he originally rightfully received them from the railroad company they certainly cannot now be recovered from him by either company; but if he wrongfully received them it did not confer any right upon the Credit Mobilier to recover them from him, for they were not paid to him on its account or for its use; and, whether he rightfully or wrongfully received them, they were plainly wrongfully charged by the railroad company to the Credit Mobilier as payments under the contract, and the action by both companies respecting them, in Sept., 1868—the railroad company in assuming them and the Credit Mobilier in taking them out of the suspense account and charging them back to the railroad company's general account—was therefore right, whatever motives actuated it. The only effect was to increase the indebtedness of the railroad company to the Credit Mobilier just so much in the suit which, it appears, is now pending between the two companies respecting this account; and if, as suggested by the complainants (which, however, does not appear in evidence), the railroad company has by lapse of time or otherwise lost its claim upon Mr. Durant for them, that confers no new right upon the Credit Mobilier to recover them.

121 But as to the $136,000 (the remainder of this $304,874.45) the facts are entirely different. This was paid to Mr. Durant by the railroad Co. on account of these profits only. His own account (Hardy depositions, Ex. No. 8, Calhoun) so credits it, and it is not otherwise anywhere accounted for, and therefore, as stated in the draft report, having been received by him as profits, he received it for the company, and must be charged with it accordingly, in addition to the other amounts, with interest from Nov. 9th, 1864, its average date.

The complainants also claim that he should be charged with the $49,176.86 and the $74,542.49 contained in the account as stated by Ham (C. P. T., p. 37). Indeed, they now claim that he should be charged with the whole residue of the $967,068.62—that is, that no sums entered in this account as disbursements should be allowed to him.

But to this claim (with the exception of the $13,000, July 15th, 1865, lumber for shanties, &c.) I cannot agree. The first two items, the $49,176.86 and $74,542.49, are plainly the same amounts allowed in the adjustment account of the railway bureau as having been actually expended upon the railroad work—the former for money expended by the railroad company and which Cisco's treasurer's receipt, annexed to Mr. Durant's testimony, shows was expended to that company by the "contractors," and the latter as for work

122 done or assumed "by assigners of contract"—that is, as Mr. Durant says (X 237), "the assignees under the $1,600,000 subscription," and I think the other evidence confirms that these amounts had been actually expended; and from the evidence they

must have been expended by Mr. Durant, either from his own moneys or from the moneys received by him upon the $1,600,000 subscription, and, if from either, they are properly allowed to him here, as I charge him with the whole $400,000 upon this subscription.

And so also with the other disbursements in the account stated by Mr. Ham (p. 38), except the $13,000. Ham stated these as disbursements and does not intimate that they were not actually expended. Indeed, from his saying that for the $429,719.35 and the $168,874.45 there were no vouchers, it is fairly inferable that for these other sums there were vouchers. A comparason also with Mr. Durant's accounts shows that all these items there appear, and while those accounts of themselves would not be sufficient to discharge him I think they may properly be referred to when thus confirmatory of the other evidence.

But as to this $13,000 it now appears from Mr. Durant's general account (Hardy depositions, Ex. No. 10, Calhoun) that he had otherwise received this amount directly from the Credit Mobilier, though for some unexplained reasons it did not get credited upon his books.

It was, therefore, wrongfully charged to this contract to bal-
123 ance the payments made to him under it, and as he has thus received this amount from this company a second time he must, I think, be charged with it here.

I am also now satisfied that the draft report is wrong in allowing to Mr. Durant the whole $47,500 as paid in by him towards the 25 (twenty-five) per cent. upon his stock. He should be allowed only the $9,525 paid upon 105 shares of stock, which he retained as a part of his 6,000 shares subscription. The error in the draft report occurred through oversight of the fact that the 400 shares transferred to Barnes, Hall, and Train formed no part of this subscription.

Secondly. *Suspense Account.*

1st. As to the item of $30,081.67.

On examination I think, as claimed by Mr. Durant, that the draft report is wrong in charging this amount to him. He now for the first time calls attention to the fact that Ham's affidavit shows that this sum had before this suit been repaid to the Credit Mobilier by the railroad company. This error in the draft report arose from the misprinting of the affidavit. The entry as printed (C. P. T., p. 42–43) seems consistent at least with the fact that this sum was, in September, 1865, like other sums, merely taken by Ham out of the suspense account and charged back to the railroad company's gen-
eral account, and, as neither party had claimed otherwise, I so
124 regarded it. But the real entry, as it appears in the original affidavit, shows that this amount had, on June 15, 1867, been repaid to the Credit Mobilier by the railroad company, and had then been taken out of the suspense account and credited to the railroad company in general account, and thus settled.

2d. As to the two items of $30,000 and $5,500.

On reviewing the evidence, I think these amounts must be charged to Mr. Durant.

That he received them from the Credit Mobilier, as stated in the draft report, there can be no doubt. My doubt, then, was whether, under the charge of the bill and the terms of the decree, the evidence sufficiently shows that they were procured for or converted to his own use; but, on further consideration, I am now led to the conclusion that it does. The vouchers Mr. Durant produces for them are upon their face his own personal obligations, or at least bound him personally; for, although to that for the $30,000 "agent" is added to his signature, it does not appear as agent for whom it was given, nor is there any evidence of any authority from any source to give it. He says, what does not appear upon its face, that it was the obligation of the railroad company, but some authority to give such an obligation should have been shown; certainly it is not to be implied.

The dates of these original payments do not clearly appear in the different statements of them, but it is apparent on inspection
125 that none of the dates given to them in these statements agree with the dates of the vouchers now produced. These circumstances, I think, are sufficient to throw upon Mr. Durant the burden of accounting for these moneys traced directly to his hands on vouchers appearing upon their faces to be his own personal obligations, and this I do not think he has at all satisfactorily done.

The most that can be claimed respecting them upon the evidence is that they were expended at Washington in the controversies or settlement between the railroad company and its Eastern Division, which resulted in the amendment to the railroad company charter of July 2d, 1864; but, assuming this and assuming that they were properly so expended (which the complainants deny), I fail to see how it is any justification for Mr. Durant receiving them from the Credit Mobilier. I therefore charge him with them, with interest from the dates given to them by Crane, in charging them to the expense account.

The dividend of July 8th, 1868, should, as claimed by the complainants, have been stated to have been paid in stock of the railroad company at $40 per share, equal to 75 per cent. in stock at par instead of 30 per — cash, as entered in draft report. The evidence shows that it was thus paid in stock, though it is usually stated as a cash dividend, which led to the error in the report.

The restatement, therefore, of the amounts with which I find Mr. Durant chargeable, with interest at 7 per cent. to Sept. 17th,
126 1880, the date of this report, is as follows:

			Interest.
1864, Nov. 24.	For am't rec'd for purchase of charter	46,000 00	53,029 67
1865, Mar. 10.	" " " on % of subscription under agreement of Oct. 7, 1864. Average date.	390,475	424,196 60
1864, Nov. 9.	" " " under Hoxie contract of R. R. Co., % profits	136,000	150,944 99
1865, Mar. 20.	" " " under Hoxie contract fr. Credit Mobilier	308,000	335,856 65
1865, Aug. 15.	" " " under Hoxie contract fr. Credit Mobilier	168,874 45	178,369 07

	For am't rec'd under Hoxie contract fr. Credit Mobilier	13,000 00	13,730 89
1866, Dec. 31.	" " " on suspense %	5,500	5,279 85
1867, Mar. 21.	" " " " " "	30,000	28,332 50
		1,097,849 45	1,189,740 22
1880, Sept. 17.	Am't, with interest at 7 % to date of this report		2,287,589 67
	Of these sums there were applied directly to the payment upon his stock the following amounts:		
	Of the $46,000, the amount paid upon the 100 shares retained by him from the 500	9,500	
	The rest of the 25 per cent. upon his own subscription, with which I charge him, viz., $150,000.00 — $9,500 + 25	140,475	
	And the two payments of Mar. 20th, 1865	302,770	
	And of May 16, 1865	118,000	
		570,745	

Equivalent to 5,707.45 shares of stock.

127 The dividends and allotments upon this stock have been as follows:

April,	1866. 50 % in the railroad Co.'s stock at par				285,372 50
Sept.,	" 50 %	do.			285,372 50
Dec.,	" 100 %	do.			570,745
Feb'y,	1867. 50 %	bonds	285,372 55		
Dec. 12,	" 60 %	stock			342,447
	60 %	bonds	342,447		
Dec. 28,	1867. 40 %	stock			228,298
Jan'y 3,	1868. 20 %	bonds	114,149		
June 17,	" 40 %	stock			228,298
July 3,	" 75 %	bonds	428,056 75		
July 8,	" 75 %	stock			428,056 75
Dec. 28,	" 200 %	do.			1,141,490
			1,170,025 25		$3,510,079 75

And
June 17, 1868. 60 % cash, 342,447.00.

The complainants still strenuously insist that the income bonds and the stocks purchased *purchased* by Mr. Durant under the trustees' circular of Sept. 22d, 1869, should be brought into the account; but after much reconsideration I am still unable to adopt this view. His purchase was as a stockholder in the railroad company; the purchase was of bonds and stock together, and it can hardly be said that the purchase-money was paid more for the one than for the other; and it is plain that in the purchase Mr. Durant could not have directly used the money which he had from two to five years previously obtained from the Credit Mobilier, unless it is to
128 be assumed that being then indebted to it for these moneys he must be held to have so invested them. Indeed, this is what the complainants claim, not only in this matter, but, as already stated, in respect to all the other stock and bonds issued to Mr. Durant to the amount in which he is found indebted to the company; but it seems to me that to assume this I should exceed and

depart from the instructions of the decree and usurp the province of the court.

It is proper, however, as requested by the complainants, to put before the court the facts respecting these bonds.

Mr. Durant, at the time of this purchase, held, it would seem from Oliver Ames' testimony (C. P. T., p. 33), 31,605 shares of the stock of the railroad company, somewhat less, it will be seen, than I find he had previously received or should have, as allotments upon his Credit Mobilier stock, purchased with its money. He received from the trustees upon this purchase $700,000 of the income bonds and $1,400,000 of the railroad company's stock, for which he paid $560,000. The income bonds were dated Sept. 1st, 1869, and were payable five years after date, with interest at the rate of 10 per cent. per annum, payable semi-annually, which was always regularly paid. When these bonds matured they were exchanged for the sinking-fund bonds at the rate of $6.00 of the latter for each $5.00 of the former. The sinking-fund bonds bear date Sept.
129 1st, 1873, and are payable twenty years after date, with interest at the rate of 8 per cent. per annum, payable semi-annually, which has also always been regularly paid.

As to the prices of gold between Jan'y 1st, 1868, and July 1st, 1878, inclusive, I find them to have been as stated by Ham on page 4 and 5 of his depositions, given before Sperry, October 17, 1879, and I adopt the statement of these prices there given as a part of this report.

It is also proper to add that I find it impossible to strictly comply with the instructions of the decree to report the amount of the profits and dividends "over and above said seven per cent. interest," as by the evidence the stock and bonds have fluctuated in value and no time is fixed by the decree for valuing them.

It also appears from Mr. Durant's answers to the interrogatories propounded to him by the complainants in the contempt proceedings that all or most of his bonds and much of his stock of the railroad company had been disposed of or pledged before the commencement of this suit, and that he had also afterwards purchased and sold the stock largely, so that at the time of answering he held more of the stock than he had held at the date of the injunction, but just how much he held at either date and when and at what prices he sold and bought do not appear, so that I can only report, as I have done above, the total amount in bonds and stocks
130 at their par value which he received or should have received as profits or dividends upon that portion of his stock in the Credit Mobilier which I find he had purchased with its money.

Providence, September 17th, 1880.

The foregoing as a draft supplemental report was submitted to the parties September 17th, 1880, to which time the proceedings had been regularly adjourned for that purpose, and by agreement of parties October 1st was fixed as the time for filing objections to the same, and an adjournment taken to Oct. 6th for the hearing upon such objections.

Within the time appointed Mr. Durant filed the objections which I herewith return, and on October 6th he was fully heard upon these objections, and the complainants were heard upon their former objections; but after considering the same I find no cause for changing the foregoing draft reports, and return them as my report in this cause.

On October 6th Mr. Durant presented a motion to reopen the testimony, but doubting my power under the terms of the decree to entertain it at this stage of the cause, I declined to hear it.

Afterwards, on November 2d, 1880, he filed the notice and affidavit of the court's ruling, which I herewith return, and on December 16 he renewed the motion upon the petition and affidavits which had previously been presented to the court, and,

131 acting upon this statement of the court's rulings, I then entertained the motion, and after full hearing overruled it. Mr. Durant requests me to state the grounds for this ruling. They were in brief—

First. Ham's last affidavit of December 2d, fully answering and explaining his previous one of October 5th. The motion rested entirely on the affidavits of Mr. Durant and his witness Crane, neither of which, I thought, in the light of the evidence already in the case, showed sufficient reasons for sustaining the motion.

Secondly. But had this been otherwise I did not think Mr. Durant's affidavit showed such diligence on his part or such explanation or reasons why the alleged new evidence had not been discovered and introduced before as to lay sufficient grounds for the motion at this stage of the cause or to justify me in further withholding my report.

Respectfully submitted,

JAMES TILLINGHAST, *Master.*

Master's fees, including services under former com'n of 1875	$2,000 00
Paid expenses	4 50
	$2,004 50

Endorsed: Master's report. Isaac P. Hazard *et al. vs.* Thos. C. Durant *et al.* Filed January 15th, 1881. Thos. W. Wood, clerk.

132 STATE OF RHODE ISLAND, &c., } *sc.:*
Newport, }

Supreme Court. In Equity.

ISAAC P. HAZARD *et al.*
vs.
THOMAS C. DURANT *et al.* } No. 2.

Objection to the Draught Report of the Master.

X section. That the master's report that the five per cent. first paid upon said Durant's, Barnes', and Hall stock, so called, and his own

first payment of $47,500 upon the 500 shares of said stock were not paid with moneys of the Credit Mobilier.

Whereas, on the contrary, the complainants claim upon the evidence that $4,205 of said five per cent. and the whole of said $47,500 was, in fact, the money of said Credit Mobilier.

133 STATE OF RHODE ISLAND, &c., } *sc.:*
Newport, }

Supreme Court. In Equity.

ISAAC P. HAZARD and Others } No. 2.
vs.
THOMAS C. DURANT and Others. }

Report Recommitted.

In the above-entitled cause, upon motion of the complainants to dismiss the exceptions filed by the defendant Durant to the report of the master, it is by the court ordered, adjudged, and decreed that said motion be, and hereby is, granted, and that said exceptions be, and they hereby are, dismissed.

And it is further ordered, adjudged, and decreed that the said cause be, and hereby is, recommitted to said master, James Tillinghast, Esq., for further and more explicit report upon certain points hereinafter mentioned—that is to say:

To report distinctly and categorically whether the several allegations of the bill in said cause herein presently specified are true, namely, the allegations that said Durant fraudulently procured certain moneys to be paid or credited to him by the Credit Mobilier, under pretence that they were for the legitimate purposes of the corporation, and, having so procured the said moneys, fraudulently converted and appropriated them to his own use; and to report also whether said allegations are wholly true or partly true, and,
134 if partly true, to report which of them he has found to be true or to what extent he has found them or any of them to be true, and of the said moneys so obtained by said Durant by actual fraud, as charged in said bill, the master shall state an account, by explanation of his account already rendered or otherwise, so as to clearly indicate under which particular allegation of said bill each item has been proved before him.

And the master is at liberty to hear further testimony if he shall see fit.

NEWPORT, *ss:*

FEBRUARY 24TH, A. D. 1882.

Entered as a decree of court this day.

THOS. W. WOOD, *Clerk.*

NEWPORT, *sc:*

ISAAC P. HAZARD *et al.*
vs.
THOMAS C. DURANT *et al.*
} Bill No. 2. Equity Cause No. 349.

Supplemental Report.

To the honorable supreme court:

I, James Tillinghast, master in said cause, to whom the same was recommitted by the decree entered therein February 24th, 1882, with more specific instructions, according to the commission thereunder herewith returned, respectfully further report, for con-
135 venience of reference following the divisions of my former report and the account there stated:

I.—*As to the Purchase of the Charter or Control of the Company.*

The allegations respecting this are found upon page 6 and at the top of page 7 of the printed bill and are as follows:

"And your orator, further complaining, says that the said defendant, Thomas C. Durant, was active in promoting the organization of said corporation, the Credit Mobilier of America, and that on or about the 24th day of November, A. D. 1864, he presented to the officers and agents of said corporation a claim for forty-six thousand dollars as for so much money paid to one H. C. Crane for the expenses incident to such organization, and caused and procured himself to be credited upon the books of said corporation with said amount, as your orator is informed and believes and therefore charges, in part payment of ninety-five per cent. on five hundred shares in the capital stock of said corporation, and the same was allowed to him by and in behalf of said corporation as and for so much money paid thereto; that the said Henry C. Crane was and ever since has been a confidential clerk in the employ of said Durant; and your orator is informed and believes and therefore charges that no sum whatever was claimed by or paid to the said Henry C. Crane for any services or disbursements in and
136 about the organization aforesaid, and that his name, if used in any way therein, was so used for the sole benefit of the said Thomas C. Durant and by way of cover and concealment of the connection of the said Thomas C. Durant with said transaction."

These allegations I found and now find and report to be wholly true, and under them, for the reason fully stated in my former report, I charged and now charge Mr. Durant with the whole $46,000, the first item of the account, as stated in that report.

II.—*The Hoxsie Contract.*

The allegations respecting this are found upon pages 7 and 8 of the printed bill and are as follows:

"And your orator, further complaining, says that prior to the organization of said corporation as aforesaid and before it was capa-

ble of contracting with said corporation, the Union Pacific Railroad Company, and while its said organization was in contemplation, for the purpose of aiding in the construction of said company's railroad, your orator was informed and believes that said Thomas C. Durant, consulting and professing to act in concert with others who subsequently became members of and stockholders in said corporation upon its organization being completed as aforesaid, and being then vice-president of and active in the management of said railroad company, caused and procured a contract to be made between the said Union Pacific Railroad Company and one Herbert M.
137 Hoxsie for the doing of certain work in and about the construction of said railroad for the prices therein agreed to be paid therefor."

"That the said Hoxsie was but the instrument and agent of the said Thomas C. Durant, and had no interest in said contract and no control over the same, and never did any work under the contract or advanced any moneys therefor, but his name was used therein only as a cover and to conceal the connection of the said Durant with said transaction, he, the said Durant, representing at the time to his associates and the directors and stockholders of the Credit Mobilier of America aforesaid and assuring them that the said contract was, in truth and in fact, taken and held for the benefit of the said last-named corporation, and to be assigned and transferred to such corporation when it should, by organization under its charter, become capable to accept and undertake the same."

"That, as your orator is informed and believes, prior to March, 1865, when said contract was in form assigned to and assumed by said corporation, the Credit Mobilier of America, there had not been to exceed one hundred thousand dollars expended thereon or carried under the same, and that said one hundred thousand dollars had been advanced and paid by the said corporation, its agent or stockholders, and in its behalf and for its benefit, and not by the said Hoxsie or the said Durant."

138 "That on or about the 10th day of May, 1865, the said Durant presented to said corporation a claim for four hundred and twenty thousand seven hundred and seventy dollars as and for so much money due and owing upon said contract to the said Hoxsie for work done and materials furnished and expenditures made prior to the assignment thereof as aforesaid, and did falsely and fraudulently represent and pretend to the officers and agents of said corporation that said amount was justly due for actual expenditures and for money actually earned upon and under said contract prior to said assignment, and did fraudulently cause and procure said sum to be credited to him, the said Durant, upon the books of the said corporation as paid by him on that day upon and in part payment for five thousand nine hundred shares in the capital stock of said corporation, and said sum, without lawful authority and by the fraudulent act and procurement of said Durant, was so credited and allowed to him as and for so much money paid upon his said stock, and he has had the full benefit thereof."

These allegations, except as to the date of payment to Mr. Durant, as hereinafter explained, I found and now find and report to be wholly true; but, to correctly understand my former report upon the matters connected with the Hoxsie contract (and also upon
139 some other matters, as hereinafter referred to), I must ask the attention of the court to the broad instructions given me by the former decree. By it I was instructed "to inquire into the charges and allegations contained in the bill of complaint in said cause against said Durant," and if I found "the same or any material part thereof to be true," then "to take and state an account between said Durant and the Credit Mobilier of America of and concerning all and singular the moneys belonging to said Credit Mobilier had, received, or procured by said Durant, or by any person for him or for his use, and fraudulently or wrongfully held, used, or converted, as alleged in the bill, with interest thereon, at the rate of seven per cent. per annum, from the time the same were so as aforesaid had, received, or procured by or for said Durant."

This, as I interpreted it, placed before me the whole bill, and necessarily imposed upon me the duty of construing it, and, on looking into the bill, it did not seem to me that claims under it on account of this Hoxsee contract were necessarily to be limited to the $420,000 claimed in the last paragraph on page 8 of the printed bill, quoted above, but that, fairly construed, the bill, in its preceeding paragraphs above quoted, sufficiently charged that said Durant, under cover of Hoxsee's name, really held this contract and all benefits accruing from it in trust for the corporation itself, so as to entitle the complainants to charge him with all moneys received
140 under it properly belonging to the corporation, whether as profits or otherwise, not accounted for and, in the language of the decree, fraudulently or wrongfully held, used, or converted to his own use.

The bill also charges, upon pages 4 & 5 of the printed bill, as follows:

"And your orators further say that he is informed and believes that it appears by the books and records of said corporation kept by its clerks and servants, and that in fact the said defendant, Thomas C. Durant, procured and caused to be paid to him and to others, for his use and benefit, by the officers and agents of said corporation and of and from its funds and moneys, the several sums of money specified in the schedule hereto annexed and marked Exhibit E and made part of this bill and at the dates and times therein mentioned, and that the said several sums of money hereinbefore mentioned were and each of them was so procured by the said Thomas C. Durant by means of his said office of president and upon the false and fraudulent representation and pretence that the same had been by him paid for the benefit of said corporation or in the promotion of its business or the furtherance of its interest, or were required to be paid to and for the use of said corporation or to some person or persons having just and legal claims and charges against the same for said amounts, respectively, and that each and all of said sums were required to be paid and were paid in and about the

141 business of said corporation and for its use and benefit; which representations, as your orator is informed and believes, were by the said corporation, its officers and agents, believed to be true, whereas your orator is informed and believes and therefore charges that the said representations and pretences so by the said defendant, Thomas C. Durant, made as aforesaid were and each of them was false and unfounded and known to be so by the said Thomas C. Durant, and that each and all of said sums of money hereinbefore mentioned were procured by him with intent to defraud the said corporation, your orator, and other stockholders therein and to convert the same to his own use, and that the same were by the said defendant, Thomas C. Durant, so converted and applied to his own use."

These allegations (except as to date, which I deem immaterial) I also find [found] and now find and report to be wholly true as applied to the first four items of Exhibit E (otherwise known in this cause as "the suspense account," a copy of which for convenience of reference I annex to this report) and aggregating $168,874.45, for I also found, as stated in my former report, that these same items made up the $168,874.45, which were falsely added to the December estimate as for extra work under this Hoxsee contract, which in fact was never done, but under pretence of which this amount was fraudulently procured by Mr. Durant

142 from the Credit Mobilier to cover alleged expenditures at Washington in matters of the railroad company. I therefore, for the reasons stated in my former report under these allegations, charged and now charge Mr. Durant, not only with the $308,000 and the $168,874.45 and the $13,000 which I found and now find and report he had fraudulently procured and received under cover of this contract directly from the Credit Mobilier itself, but also with the $136,000 additional which I found and now find and report that he had also received from the railroad company and as and for alleged profits under it and not accounted for, deeming that these profits also properly belonged to the Credit Mobilier, and that his conversion of the same to his own use was therefore both wrongful and fraudulent under the bill and decrees as I construe them. I may add, as it may assist the court, that the $420,770 mentioned in the above-quoted paragraph from page 8 of the printed bill is plainly the $302,770 (part of the above $308,000) and the $118,000 (which, if not directly a part of, is only accounted for as derived from the above $168,874.45) shown by the Hams affidavit (complainants' printed testimony, pp. 37–39) to have been credited to Mr. Durant on March 20th and May 16th, 1865, directly towards the payments upon his stock.

As to the next two items of this Exhibit E, those for $30,000 and $5,500, being the last two items with which I charge Mr. Du-

143 rant in the account stated in my former report, I found and now find and report that as applied to them the allegations last above quoted from page 4 and 5 of the printed bill are also (except as to dates) true, excepting that I did not and do not now find any sufficient evidence that these sums were procured by Mr.

Durant with intent to convert or that he did in fact convert them to his own individual or private uses. So far as the evidence discloses, what was his actual intent in obtaining them or for what purpose they were in fact used by him, the fair inference is that, as claimed by him, they were to meet expenses, legitimate or illegitimate, incurred at Washington in procuring the amendment to the charter of the railroad company, of which he was then the vice-president and an active manager.

But I also found that as a matter of fact the vouchers which Mr. Durant now states he gave to the Credit Mobilier for these sums, so far from disclosing the purposes for which they were obtained, were upon their face his own personal obligations, and that both companies afterwards repudiated these expenses and carried these, with other like items, into their suspense accounts. These facts, on reconsideration of my draft report, I thought fairly brought these two sums within these allegations of the bill as procured by him of the Credit Mobilier by means of his office as president, by means
144 of false and fraudulent representations, and, if actually used, as he claimed, for the purposes of the railroad company, that such use, as between him and the Credit Mobilier, was a conversion to his own use, as here alleged, and I therefore charged and now charge him with these amounts accordingly under this clause of the bill.

This leaves the item of $390,475, with which I have charged Mr. Durant on account of the subscriptions under the agreement of Oct. 7th, 1864, to be considered. The bill alleges, in the first paragraph upon page 4 of the printed bill, as follows:

"And your orator is informed and believes and therefore charges that the said Thomas C. Durant, in all instances in procuring money from said corporation, its treasurer, clerk, or agents, or in causing or procuring moneys to be paid by the said corporation, its treasurer or other officers or agents, whether to himself or to any other person, represented and pretended to the directors, officers, and agents of said corporation that such moneys were required and were to be used and were used for the benefit of said corporation and in about its legitimate business, and that upon such representations, which were, by the said corporation, its officers and agents, believed to be true, as your orator is informed and believes, he, the said defendant, Thomas C. Durant, did, between May, 1864, and January, 1868, receive and cause to be paid to himself and other persons, on his
145 orders and by his directions, of and from the funds and moneys of the said corporation, very large sums of money, amounting in the whole, as your orator believes and charges, to more than a quarter of a million dollars, which he deceitfully and fraudulently applied to his own uses and purposes."

It also alleges on pages 5 and 6:

"That between October, 1864, and January, 1868, the said defendant, Thos. C. Durant, paid to the said corporation, the Credit Mobilier, and was credited on its books with large sums of money as paid upon his subscriptions to its capital stock, or the subscriptions of other persons thereto transferred to him, and that large parcels

of said stock have been by him transferred to or into the names of other persons upon the books of said corporation, and that, as your orator is informed and believes, there are now standing on the books aforesaid in the name of the said Thos. C. Durant 5,658 shares of said stock of the par value of $565,800, for which he is credited upon the books with full payment therefor, and said stock is of the actual value aforesaid or very near to the said amount."

"And your orator is informed and believes and therefore charges that a very large portion of said moneys so as aforesaid fraudulently converted or procured by the said defendant, Thomas C. Durant, as aforesaid has been by him, directly or indirectly, appropriated and applied to the payments for said stock so by him held as aforesaid."

And on page 11:

146 "That each and all said sums of money, shares, and stock and bonds as aforesaid are justly due and belong to said corporation, the Credit Mobilier of America, and to your orator and other stockholders therein, and that the said defendant Durant is justly indebted to the said corporation and to your orator and other stockholders therein in the full amount of said sum and value of said shares, stock, and bonds."

And on page 12 prays:

"That the said defendant, Thomas C. Durant, may come to a fair and just account with the defendant corporation, the Credit Mobilier of America, and with your orator of and concerning all and singular the sums of money, stock and shares in capital stock, and bonds as aforesaid paid and delivered to or had and received by him, as hereinbefore stated and charged," &c.

I found, as a matter of fact, as stated in my former report, that of this sum of $390,475, with which I charged Mr. Durant, he had received in cash from the other subscribers $250,000 in payment of the first twenty-five per cent. upon their subscriptions, and which payments had subsequently been allowed to them as payments upon their stock in their stock settlement with the company, and that for this sum he had never accounted to the company, but had misappropriated it to his own use. These payments were mostly, if not wholly, made to him during the transition period of the company, while he was practically its sole manager, before its formal

147 reorganization, in May, 1865, and I regarded them, therefore, as practically made directly into the treasury of the company, and they were received by him for the alleged purpose of carrying on the work under the Hoxsie contract. The other $140,475 cash in his hands, as I thought, as between him and his co-subscribers under his own subscription, I found he had actually afterwards, upon the reorganization, received in stock issued directly to himself as paid in full, but for which to this amount he had never paid, and, construing these allegations and the prayer of the bill in the light of the former decree, I thought these facts sufficient to make him chargeable under them with these amounts as moneys properly belonging to the corporation, received by him as here alleged, and

fraudulently and wrongfully withheld from it and converted to his own use.

And, notwithstanding the somewhat more restricted tenor of the instructions of the present decree, I still think that he is properly chargeable under it with these amounts under these allegations of the bill, and so now report accordingly.

Respectfully submitted,

JAMES TILLINGHAST, *Master.*

Endorsed: Filed April 6, 1882. Thos. W. Wood, clerk.

148 NEWPORT, *ss:*

Supreme Court.

ISAAC P. HAZARD *et al.* }
v. } No. 2. Equity No. 349.
THOMAS C. DURANT *et al.* }

Decree Confirming Report.

Complainants' exception No. 10 sustained, &c.

And now, on this 2d day of December, A. D. 1882, this cause having heretofore been heard upon exceptions to the report of the master, and having been considered by the court, it is thereupon ordered, adjudged, and decreed by the court as follows:

First. That the complainants' exception No. 10 to the report of the master be sustained, and that in other respects said report be confirmed absolutely.

Second. That the defendant, Thomas C. Durant, is accountable for and do, within ninety (90) days from the date hereof, pay the sum of sixteen million seventy-one thousand six hundred and fifty-nine $\frac{97}{100}$ (16,071,659.97) dollars, with interest from this date, the said sum, with interest thereon, to be deposited in the registry of this court, or to be paid, in the first instance, to Rowland Hazard, of South Kingston, in said State, and Henry Martin, of Brooklyn, in the State of New York, who are hereby appointed special commissioners, with authority, jointly and severally, to collect and receive the same, and with power to take such steps to collect the same as
149 may be necessary and according to law, and said fund, or so much thereof as may be collected by process or otherwise, is hereby directed to be paid and deposited into the registry of this court to the credit of this cause.

Third. Of the aforesaid total sum of $16,071,659.97 *dollars* the defendant, Thomas C. Durant, is hereby allowed and is decreed to be entitled to pay and discharge $8,816,232.93 *dollars* or any part thereof *pro tanto* by transferring and delivering stock of the Union Pacific Railroad Company and first-mortgage and sinking-fund bonds of said company, as per Statement "G" now exhibited to the court and directed to be filed in this cause, with all dividends which may have been collected or secured by said defendant or his as-

signs after the date of this decree, together with interest on the same to date of payment thereof by said defendant, the certificates of said stock, with transfers thereof, and the said bonds to be delivered to the said Rowland Hazard and Henry Martin, who are hereby appointed special commissioners to receive the same, and who are hereby authorized and directed to sell the same, or such portions thereof as may be delivered to him from time to time as they are secured, at public auction, and receive the proceeds thereof, and, after deducting the costs and charges of such sales, deposit the same in the registry of this court to the credit of this cause, provided, however, that the said privilege hereinbefore granted to the said defendant, Thomas C. Durant, to transfer and deliver said stocks and bonds in partial discharge and payment of the sum hereinbefore decreed to be paid by
150 him be exercised by him within thirty days from the date of entering this decree, and that in default of such transfer and delivery, or of the transfer and delivery of the entire amount of said stock and bonds within the said thirty days, the obligation of the defendant, Thomas C. Durant, to pay the said proportion of the said sum or of the residue of the same, after deducting the amount of such stocks and bonds as may be delivered, as aforesaid, at their face value, shall become, and is hereby declared to be, absolute.

And provided further, nevertheless, that the said option or privilege of the said Thomas C. Durant shall not interfere in any manner with any order or decree in the cause touching the transfer, delivery, sale, or other disposition of said stock and bonds.

Fourth. The defendant, Thomas C. Durant, is likewise ordered and directed to transfer and deliver within thirty days from the date hereof five thousand seven hundred and seven $\frac{45}{100}$ ($5{,}707\frac{45}{100}$) shares of the stock of the Credit Mobilier of America (which stock has been found by the master to have been purchased with the funds of the Credit Mobilier, and which stock, with any dividends or profits accrued or to accrue on the same, is hereby declared to be the property of said corporation, subject to the decrees and orders in this cause), with any interest, dividends, rights, benefits, and profits which may have accrued to the said Thomas C. Durant as the holder of said $5{,}707\frac{45}{100}$ shares of stock or any part thereof and not
151 hereinbefore charged against him; said transfer and delivery to be made to the said Rowland Hazard and Henry Martin, or either of them, as special commissioners, with power, which is hereby granted to said commissioners, forthwith to take such measures, by suit or suits in their own names or otherwise, as they may be advised is lawful and necessary to enforce such transfer, collection, or delivery, and said stocks to be held by said commissioners subject to the further order of the court in this cause.

Fifth. All interlocutory injunctions heretofore made in this cause, so far as consistent with this decree, are declared to be and are hereby made perpetual, and the further consideration of the cause, and particularly as to allowances to the complainants for costs and expenses and services, and as to the distribution of the funds that may be deposited in the registry of the court to the credit of this

cause, and also the consideration of any order or decree which may be necessary in the premises against the defendant, Thomas C. Durant, by reason of any default which may be made by him touching any portion of this decree, and also the consideration of any other or further decree herein against or concerning the defendants other than the said Thomas C. Durant, be, and they hereby are, directed to stand over, with leave to any party in interest, save parties in contempt or parties who may appear to be for any other cause disqualified, to apply at any time for further orders and directions.

152 Sixth. It is further ordered that the complainants forthwith cause a certified copy of this decree to be delivered to the said Samuel R. Honey, Esq., of counsel for said Thomas C. Durant, and proof of such delivery and time and place thereof to be filed in the clerk's office of this court in said county.

Entered as the decree of court December 2d, 1882.
By order thereof.

THOS. W. WOOD, *Clerk.*

NEWPORT, *ss:*

In the city of Newport, in said county of Newport, on this 2d day of December, A. D. 1882, I have this day, at 55 minutes past nine o'clock p. m., left a certified copy of the within written decree, bearing the seal and certificate of Thomas W. Wood, Esq., clerk of the supreme court within and for the county of Newport, thereon, at the last and usual place of abode of Samuel R. Honey, of counsel for the respondents within named, with his wife, the said Samuel R. Honey then and there himself being —, but having retired to bed, and the said Samuel B. Honey having subsequently acknowledged that he had received the same.

BENJ. EASTON, JR.,
Sheriff of said County.

153 STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS,
Newport, sc:

OFFICE CLERK OF SUPREME COURT.

I, Thomas W. Wood, clerk of said court for and within said State and county, do hereby certify that the foregoing and hereto attached papers contain a true copy of the bill in equity, writ *ne exeat*, agreement to discharge writ *ne exeat*, *ne exeat* bond, discharge of writ *ne exeat*, injunction, defendants' appearances, decree *pro confesso*, motion to rescind decree, decree *pro confesso*, order to commit for contempt, motion for leave to purge denied, motions for discharge and to purge, order for reference to master, master's report, objection to section 10 of report, report recommitted, supplemental report, decree confirming report, service of same on defendants' counsel, wherein Isaac P. Hazard *et als.* are complainants and Thomas C. Durant *et als.* defendants, as compared by me with the originals on file.

In witness whereof I have hereto set my hand and
[SEAL.] affixed the seal of said court this seventh day of May, A. D. 1887.

THOS. W. WOOD, *Clerk.*

154 I.—*Part of Seventh Plea.*

Exemplification.

PHILADELPHIA COUNTY, } *sct:*
State of Pennsylvania, }

Among the records and proceedings of the court of common pleas, No. two, for the county of Philadelphia, State of Pennsylvania, the following may be found as matters of file and of record at No. 1195, Sept. term, 1875, to wit:

Docket Entries.

September Term, 1875.

Geo. Biddle, for Townsend's Savings Bank of Conn. 1, 5, '78.
George W. Biddle. 1195.

ROWLAND G. HAZARD

vs.

THE CREDIT MOBILIER OF AMERICA, ROYAL E. ROBBINS, EZRA H. Baker, Frederick L. Ames, Theodore E. Sickels, Paul Pohl, Jr., C. M. Griskey, and F. Herbert Janvier, Directors of the said The Credit Mobilier of America, and The Union Pacific Railroad Company.

June 15, '78.—Petition to intervene filed.
June 22, '78.—Petition granted as prayed for.
155 Dec. 3, 1878.—Petition of Jan'y 26, 1878, granted *nunc pro tunc*, saving intervening rights.
Bill in equity filed Nov. 17, 1875.
Nov. 17, 1875.—Aff't of Rowland G. Hazard filed.
Nov. 17, 1875.—Decree of court entered. (See Minute Book, 1875, page 473.)
Nov. 17, 1875.—Bond filed & injunction ex'c't.
Jan'y 26, 1878.—Petition of Tilton E. Doolittle, receiver of the Townsend Savings Bank of New Haven, to intervene filed.
Eo die.—Affidavit of T. E. Doolittle, receiver, &c., filed.
Jan'y 18, 1879.—Petition and order allowing Oliver Ames to intervene.
Feb'y 7, 1879.—Petition for removal of case to the C. C. U. S. filed.
Eo die.—Bond filed.

And now, to wit, November 17th, 1875, bill in equity filed in the following words, to wit:

In the Court of Common Pleas, No. 2, of Philadelphia County. In Equity.

Between—

ROWLAND G. HAZARD, Plaintiff,
and
THE CREDIT MOBILIER OF AMERICA, ROYAL E. Robbins, Ezra H. Baker, Frederick L. Ames, Theodore E. Sickels, Paul
156 Pohl, Jr., C. M. Ghriskey, and F. Herbert Janvier, Directors of the said The Credit Mobilier of America, and The Union Pacific Railroad Company, Defendants.

— Term, 1875. No. —.

To the honorable the judges of the court, sitting in equity:

Your orator, Rowland G. Hazard, suing as well for himself as on behalf of all stockholders of the Credit Mobilier of America who, contributing to the expense of this suit, shall become parties thereto, complains and says:

1. By an act of the General Assembly of the Commonwealth of Pennsylvania approved the first day of November, 1859, commissioners were appointed to organize a company by the name of the Pennsylvania Fiscal Agency, with a capital stock of fifty thousand (50,000) shares of one hundred dollars each. The company was authorized, amongst other things, to make advances of money and of credit to railroad and other improvement companies and to aid in like manner contractors and manufacture-s, and were authorized as a company to make all requisite contracts (see P. L., 1860, p. 896).

Letters patent creating the subscribers to the stock of the
157 company a body corporate under the title before given were issued under the hand of the Governor and the great seal of the Commonwealth on the first day of June, 1863. On the 26th of March, 1864 (P. L., 1864, p. 97), an act was passed by the said General Assembly changing the name of the said corporation to that of the Credit Mobilier of America.

2. By an act amending the charter of the said company, approved the 28th day of February, 1867 (P. L., 1867, p. 291), the said company was authorized to appoint its own officers to execute any contract referred to in said amendment. By section 4 of the original act the principal office of the company was required to be in Philadelphia, but the directors were authorized to establish branches and agencies in Europe and elsewhere. By section 5 of said act three-fifths of the directors of the said company were required to be citizens of the United States and the majority of the whole to reside in this State; all which will appear by the records of the said acts of Assembly and letters patent, references being thereunto had. The said company, after its organization, began to transact business to a large extent, particularly as hereinafter referred to.

3. Your orator became a stockholder in said company about the

— day of ——, in the year 1865, being then the owner of one
158 thousand (1,000) shares of stock, and his interest has since been increased to over sixteen hundred shares of the par value of one hundred dollars each, which he now holds.

4. Your orator was elected a director of said company in the year 1867, and continued to be such a director until the spring of the present year, 1875, although he desired to be relieved of his office of director from the year 1873, which, however, was refused.

5. The said Credit Mobilier of America had at one time large transactions with the defendant, The Union Pacific Railroad Company. In the year 1868 or prior thereto a settlement was made between the said companies by which the Union Pacific Railroad Company was found to be very largely indebted to the Credit Mobilier of America. On the fourth day of August, 1869, the Union Pacific Railroad Company gave its promissory note to the Credit Mobilier of America, dated at New York on that day, for the sum of two million of dollars ($2,000,000), payable on demand, for the greater part of what was then found to be due upon the said settlement.

There was also a large indebtedness due by the said Union Pacific Railroad Company, amounting to over two hundred thousand dollars ($200,000), but which was not liquidated by any note or obligation.

6. Your orator believes and so charges that the said settle-
159 ment which resulted in the giving of the said note as aforesaid was carefully made between the directors and officers of the said corporation at a time when access was had to the various vouchers, data, and memoranda showing the transactions between the companies, and that the note at the time it was given was a *bona fide* existing indebtedness of the Union Pacific Railroad Company to the Credit Mobilier of America.

7. The said Credit Mobilier of America ceased all active business beyond an attempt to collect its assets for some time prior to the date of said note, and no legal action was had upon said note, which continued due and unpaid until some time in the summer of the present year, 1875, when suit was brought thereon in a court of record of Boston, in the State of Massachusetts.

8. In the year 1872 a petition was presented to the court of common pleas of the city and county of Philadelphia by the said Credit Mobilier of America, setting forth, amongst other things, that it had not, for a period prior to the year 1868, transacted business further than collecting its assets, paying its previous liabilities, and the expenses incident to litigation, and that it had no function to fulfil further than to collect its assets and distribute the same amongst its creditors, if any, and after payment of creditors to divide the surplus among the stockholders or persons legally entitled thereto, and
160 praying under its corporate seal, attested by its then president, Sydney Dillion, to be decreed to have permission to surrender its charter and corporate powers and to be dissolved as a corporation, as by the records of the said court of common pleas will appear.

The said petition was refused, the president judge of the said court delivering an opinion against the prayer of the said petition for the reasons stated by him, which were, amongst other things, that no such decree should be made until the court was able to make distribution among the corporators of what remained of the assets after the payment of the creditors. (See opinion of Allison, P. J., 30th Legal Intelligencer, p. 44.)

A large number of the stockholders of the Credit Mobilier are stockholders in the Union Pacific Railroad Company, and in many cases their interests in the railroad company are greater than they are in the Credit Mobilier. Your orator, fearing that, for some reason prejudicial to the interests of the Credit Mobilier of America, the said note before referred to of two million dollars ($2,000,000) would not be collected or steps taken for its recovery before the bar of the statute of limitations, urged suit to be brought thereon, which was done, as before stated, a short time before the expiration of six years from its date.

9. Your orator has reason to believe and so charges that an attempt is now being made to sacrifice the interests of the
161 Credit Mobilier of America in favor of the interests of the Union Pacific Railroad Company, and gives the following reasons in support of this charge: A majority of the present directors of the said company, to wit, those resident in the State of Pennsylvania, have little or no stock of the Credit Mobilier of America. F. Herbert Janvier has no stock. Paul Pohl, Jr., has but six shares of stock. Theodore E. Sickles has no stock and is the principal engineer of the Union Pacific Railroad Company, and C. M. Ghriskey has no stock, or had none at a very recent date. Of the non-resident directors Frederick L. Ames is the owner of stock in both companies, but your orator has been informed and believes that he is the owner of a much larger interest in the Union Pacific Railroad Company than in the Credit Mobilier of America. Royal E. Robbins is a large stockholder in the Union Pacific Railroad Company, owning, as your orator is informed and believes, five thousand five hundred (5,500) shares of the stock of said company. Ezra H. Baker, the remaining director, is a large shareholder in the Union Pacific Railroad Company, having nine thousand two hundred and fifty-four (9,254) shares therein and but six hundred and twenty-three (623) shares in the Credit Mobilier.

It will thus be seem that the board of directors has a preponderating interest against the Credit Mobilier of America in any transactions with the Union Pacific Railroad Company.

162 By a resolution of the board of directors of the Credit Mobilier of America passed the 29th day of July, A. D. 1875, Royal E. Robbins, Frederick L. Ames, and Theodore E. Sickels were appointed a committee to confer with a committee of the directors of the Union Pacific Railroad Company for the alleged purpose of arranging all matters in dispute between them. They have recently submitted a report by which it is attempted to open the settlement between the said companies made more than six years ago and to bring the Credit Mobilier of America in debt to the Union Pacific

Railroad Company by reason of those old transactions. The said committee report that they deem it wise to close, by compromise, all controversies between the two corporations, and recommend a contract to be executed by the Credit Mobilier of America by which such compromise will be effected, and the said report and contract were approved by the board of directors on October 12, 1875. A copy of the report is annexed to this bill and is asked to be taken as part thereof. Your orator has not seen the contract accompanying the said report and has not been able to obtain a copy of the same, but is informed and believes and now states that its effect will be to cancel and give up the before-mentioned note of two million dollars ($2,000,000) made by the Union Pacific Railroad
163 Company to cancel all other indebtedness from this company to the Credit Mobilier and to give up the title to the lands occupied on [by] the depot and ground at the eastern terminus of the Union Pacific Railroad Company, on the Missouri river, for a nominal sum of money, and in effect to strip the Credit Mobilier of America of all its rights as a creditor against the Union Pacific Railroad Company.

10. And your orator further believes and charges that the items of said set-off in the report of the committee of three, above mentioned, claimed by the committee of the Union Pacific Railroad Company are not valid items of set-off against the Credit Mobilier of America, but, on the contrary, they are all without any foundation.

With regard to the item of two hundred and sixty-eight thousand eight hundred and fifty dollars and seventeen cents ($268,850.17) for preliminary expenses, as to which the committee say "that nothing appears on the records of the directors of the Union Pacific Railroad Company or of the executive committee which sanction the last item of two hundred and sixty-eight thousand eight hundred and fifty dollars and seventeen cents ($268,850.17) which it is 'claimed by the Union Pacific committee should be disallowed," your orator avers that in the year 1870, shortly after
164 Thomas C. Durant had been vice-president of the Union Pacific Railroad Company and while Sidney Dillon, who is now president of the Union Pacific R. R. Co., was president of the Credit Mobilier and also a director in the Union Pacific road, the said Durant and Sidney Dillon both swore positively as witnesses in a suit against said Durant and others, instituted by I. P. Hazard and others, in the State of Rhode Island, that the said moneys were paid on account of the Union Pacific Railroad Company by the Credit Mobilier of America, and that the payments thereof were acknowledged by the said railroad company and allowed in a general settlement, and adjustment of accounts between the two said corporations having been vouched for, allowed, and adopted by the said railroad company.

With regard to the item of nine hundred and ninety-two thousand six hundred and fifty-eight dollars and fifty-five cents ($992,658.55), called in said report "special account," your orator is advised and believes and thereupon charges that the said items represent the

amount of certain moneys advanced by the Credit Mobilier of America either to the Union Pacific Railroad Company directly or else to the trustees under the tripartite agreement of October 15, 1867, and by said trustees spent for and on account of the said railroad, and which the said company repaid to the Credit Mobilier, partly in cash or partly in certain securities, which were accepted in payment by the Credit Mobilier. The said amount therefor represents merely the repayment to the Credit Mobilier of
165 moneys theretofore advanced by the Credit Mobilier to the Union Pacific Railroad Company directly or through the intervention of the trustees under the tripartite agreement, as hereinbefore stated; and your orator is advised and believes and so charges that the balance of over two million of dollars ($2,000,000), or thereabouts, due as aforesaid to the Credit Mobilier is a balance due wholly independent of the said item—nine hundred and ninety-two thousand six hundred and fifty-eight dollars and fifty-five cents ($992,658.55)—and after the payment thereof.

As to the "balance of interest" for two hundred and ninety-three thousand eight hundred and eighty-one dollars and one cent ($203,881.01), your orator avers that he is advised that there is no principle of law or equity which relieves or absolves railroad contractors from being compelled to pay interest on amounts due by them, but remaining unpaid, and that said item of set-off is wholly fictitious and fraudulent.

With regard to the item of five hundred and fifty-eight thousand three hundred and ninety-seven dollars and fifty-seven cents ($558,397.57), your orator is informed and believes that the said amount, if ever expended at all upon said road, was expended after the road had been accepted by the Government of the United
166 States and after all liability on the part of the Credit Mobilier as guarantor or contractor had ceased. Your orator is therefore advised that the Credit Mobilier is not in any way responsible for the payment of the said sum of money so expended by the Union Pacific Railroad Company upon their road, whether by the order of the Government of the United States or not.

With regard to the item of five hundred and forty thousand dollars ($540,000), which in the report of the committee above mentioned is headed "damage for non-payment of subscription of two million dollars' ($2,000,000) worth of stock," your orator has been informed and believes and therefore charges that at one time the Credit Mobilier of America directed its officers to subscribe for two million dollars ($2,000,000) of stock of the Union Pacific Railroad Company, and to receive said stock on account of the indebtedness of the Union Pacific Railroad Company to the Credit Mobilier. Your orator is further informed that the treasurer or one of the other officers of the Credit Mobilier thereupon, on behalf of the said Credit Mobilier, offered to subscribe for said stock on these terms, and demanded the two million dollars' ($2,000,000) worth of stock, and that the treasurer of the Union Pacific Railroad Company thereupon refused to receive the said subscription as aforesaid, and that there was no agreement whatever to subscribe for two

167 million dollars' ($2,000,000) worth of stock and no subscription therefor on the part of the said Credit Mobilier of America to the Union Pacific Railroad Company, and that he believes that the claim for damages for non-payment of such subscription is wholly inadmissable and fraudulent.

With regard to the item of one hundred and six thousand eight hundred and fourteen dollars and fifty-nine cents ($106,814.59), headed "cost of iron overestimated," your orator is unable to state what the character of the said item of set-off is.

With regard to the Loup Fork bridge your orator avers that in the contract under which said bridge was built the contractor was not liable to expend more than eighty-five thousand dollars ($85,000) upon any bridge built along the line of said road; and your orator is advised and believes that the said eighty-four thousand four hundred and fifty-five dollars and four cents ($84,455.04) was a proper and valid claim for extra compensation for moneys spent by the contractor upon the said Loup Fork bridge over and above the amount of eighty-five thousand dollars ($85,000), which, under the terms of his contract, was all that he was obliged to expend thereupon.

With regard to the claim of seventy thousand five hun-
168 dred and fifty-six dollars and fifty cents ($70,556.50), headed "abandoned line of road," your orator is advised and believes that the said line of road for which the said seventy thousand five hundred and fifty-six dollars and fifty cents ($70,556.50) is charged was for a certain portion of road built by the contractor, under the direction of the Union Pacific Railroad Company, and afterwards by their direction abandoned for a more practicable and better route, and that the contractor was entitled to the full payment of the amount expended by him in building the first-mentioned line of road.

Your orator therefore believes and avers that the items of set-off in the report of the said committee are invalid and fraudulent as against the Credit Mobilier of America and the stockholders thereof.

11. Your orator first learned of this attempt on the part of the board of directors to sacrifice the interest of the Credit Mobilier of America and the stockholders thereof a few days ago, either on the evening of the 9th or the morning of the 10th of the present month of November, 1875, and immediately came to Philadelphia, where the said company has an office, in order to employ counsel to resist the same.

While the Credit Mobilier has an office in Philadelphia, no real business is transacted there. None of the books of account
169 or other books or original documents of the said Credit Mobilier are kept in Philadelphia, the same being, as your orator is informed and believes, at the office of the corporation in New York, but copies of a portion of the minutes of the corporation are to be found in the Philadelphia office. The office of the company in this city is practically only used for occasional meetings of the directors and stockholders for the transaction of occasional business.

12. Your orator fully believes and so charges that the whole indebtedness represented by the note of two million dollars ($2,000,000) is an existing valid indebtedness by the Union Pacific Railroad Company to the Credit Mobilier of America, and that the same can be collected in the suit now instituted for the purpose. If this note be given up under the proposed compromise a very large portion of the value of the stock of the Credit Mobilier will be sacrificed.

13. Your orator is informed and believes and so charges that a meeting of the stockholders of the Credit Mobilier of America will be held at their office in the city of Philadelphia to-day, the 17th day of November, 1875, in order to bring about an attempted ratification of the compromise recommended in the report of the
170 committee before referred to. Your orator is strongly opposed to the same, but is ignorant whether the interest, before mentioned, of the stockholders in the Credit Mobilier of America who are largely interested in the Union Pacific Railroad Company may not preponderate against the true interest of the Credit Mobilier and bring about an inforced and improper ratification of the said compromise. Your orator charges that the whole scheme of the alleged compromise and the contract accompanying the same is a scheme to advance the interests of the Union Pacific Railroad Company and the stockholders thereof at the expense and in fraud of the rights of the Credit Mobilier of America and the stockholders thereof, and is fraudulent, invalid, illegal, and contrary to equity.

14. Your orator believes and so states that unless restrained by a court of equity the said ratification will be brought about in violation of the real interests of the Credit Mobilier of America and of the interests of its stockholders; hence your orator needs the intervention of your honorable court sitting in a court of equity.

15. Your orator charges that it is impossible to obtain from the board of directors of the Credit Mobilier of America authority to use the name of the said corporation as a plaintiff in the present suit in order to prevent the wrong about to be perpetrator
171 upon its stockholders, because a majority of the said directors are either directly in the interests of the said The Union Pacific Railroad Company or controlled by persons in the interest of the said railroad company. To ask of the directors the use of the name of the Credit Mobilier of America would, therefore, not only be an idle form, but would, perhaps, enable them to precipitate the proposed illegal action; hence your orator is compelled to bring the present suit in his own name, for the use of himself, and others, stockholders of the Credit Mobilier of America, who may desire to unite with him therein.

Your orator therefore prays equitable relief as follows:

1. That an injunction be issued by your honorable court, special until hearing and perpetual thereafter, to enjoin and restrain the stockholders, directors, and officers of the Credit Mobilier of America from and against ratifying and carrying into effect the alleged contract of compromise as reported by the committee of the directors of the Credit Mobilier of America, or any contract or compromise similar to or substantially like the same, and particularly to prevent

the surrender, cancellation, release, or giving up of the said note for two millions of dollars ($2,000,000), made and given by the Union Pacific railroad to the Credit Mobilier of America on the
172 fourth day of August, 1869, and to enjoin and restrain the said defendants and each of them from any interference to prevent the collection of the same in the suit now instituted in the State of Massachusetts.

2. That the defendants and each of them be enjoined and restrained from and against any opening and unravelling of the liquidated accounts between the two companies defendant; that the same be decreed to stand and remain as they were when the same were settled, passed, and allowed.

3. Such further relief in the premises as the said court shall deem fit.

And your orators will ever pray, &c.

ROWLAND G. HAZARD.

S. S. HOLLINGSWORTH,
GEORGE BIDDLE,
GEORGE W. BIDDLE,
Of Counsel for Complainant.

173 Copy.

EXHIBIT "A."

To the directors of the Credit Mobilier of America.

GENTLEMEN: The undersigned, appointed a committee by this board to confer with a committee of the directors of the Union Pacific Railroad Company for the purpose of arranging all matters in dispute between that company and the Credit Mobilier of America, submit the following report:

An examination of the books of both corporations and a conference between the two committees show that some time in March, 1867, the account between the two companies was made up, exhibiting a balance due this company the 31st of January of that year of $1,994,769.96; that this was reported to the board of directors of the Union Pacific Railroad Company and the report accepted; that on the 30th of September, 1868, there was a further credit, purporting to be for preliminary expenses and interest, of $268,850.17, making a total of $2,263,620.13.

It is to be borne in mind that the above statement of account between the two companies was made under the direction or supervision of parties who were directors of the Union Pacific Railroad Company and also very largely interested in the shares of
174 the Credit Mobilier of America, and, of course, in any legal conflict between the two corporations the items composing that account would be necessarily open to scrutiny, re-examination, and correction.

On the 4th of August, 1869, for the purpose of furnishing security to parties to certain appeal bonds of the State of Pennsylvania

against the Credit Mobilier of America, a note for $2,000,000, payable on demand, was executed by the president and treasurer of the Union Pacific Railroad Company and delivered to the president of the Credit Mobilier of America. This note was never credited upon our books. Your committee found that nothing appears on the records of the directors of the Union Pacific Railroad Company or of the executive committee which sanctions the last item of $268,-850.17, which, it is claimed by the Union Pacific committee, should be disallowed.

Your committee further found that, in addition to the items shown by the account in which the $2,000,000 is charged, large items of money had been paid by the Union Pacific Railroad Company to the Credit Mobilier of America and charged in a special account, amounting, as shown on the books of the former company, to $992,-658.55. A corresponding special account in our books gives the Union Pacific Railroad Company credit for about $890,000,
175 but we have no reason to doubt the former amount is correctly stated.

The committee of the Union Pacific Railroad Company also claims to correct the account as it stood when said note of $2,000,000 was given by striking out therefrom the sum of $293,881.01 improperly, as they allege, credited as a balance of interest on said account, which they assert is altogether inadvisable in an account between the contractors for building a railway and the company for which it is built.

They further claimed to charge the Credit Mobilier of America the sum of $558,397.57 as the sum expended by the Union Pacific Railroad Company in completing the 247 miles, the subject of a contract of Credit Mobilier of America, in compliance with the requisition of the Government, before its final acceptance of the same.

Said committee further claimed that there was due the Union Pacific Railroad Company on a subscription of the Credit Mobilier of America, for stock of the road, the sum of $540,000, being the difference between the par of said stock and the market price of the same at the date of the conference between the two committees.

Said committee also claims that the sum of $106,814.59 should be credited to the Union Pacific Railroad Company as
176 having been improperly allowed heretofore as extra cost above $130 per ton upon iron rails at Omaha. The evidence which entitled this *this* company to such a credit is at best very incomplete.

A claim is also put in for a refund of $84,453.04 as having been in like manner improperly credited as excess of cost of Loup Fork bridge above the sum of $85,000, as per contract. It is not shown that the bridge cost anything more than $85,000.

A sum of $70,556.50 it is also claimed should be refunded, as having been improperly allowed as damages for changing the line of road at Omaha.

To recapitulate, the Union Pacific committee makes the following claims as a set-off against the claims of this company, viz:

Interest of	
Preliminary expense allowance	$268,850 17
Special account	992,658 55
Balance of interest	293,881 01
Expended on road per order of Government	558,397 57
Damage for non-payment of subscription of $2,000,000 stock	540,000 00
Cost of iron overestimated	106,814 59
Loup Fork bridge	84,453 04
Abandoned line of road	70,556 40
A total of	$2,915,611 43

177 The committee of the Union Pacific Railroad Company made various other claims, by way of set-off or in correction of the accounts between the parties, which would require more minute investigation if they formed material elements in the conclusion to which the committee arrived.

Your committee are of opinion that most of the above specific claims of the Union Pacific Railroad Company would probably be allowed in any equitable and possible any legal settlement between the parties, in which case it is likely the balance of account would be thrown in favor of the railroad company. There is also another consideration which weighed with your committee in recommending the adjustment between the two companies in the manner hereinafter stated, namely, that although this corporation holds that the contract with the Union Pacific Railroad Company is in all respects valid and cannot be legally assailed, yet, looking to the report of a committee of Congress appointed to investigate the affairs of the Union Pacific Railroad Company, and looking to the further fact that suit has been brought by a stockholder of the company to set aside the same on account of such invalidity, your committee have deemed it wise to close by compromise all controversies and claims between the two corporations, and that the accompanying
178 contracts carrying into effect such compromise be executed by the company.

All of which is respectfully submitted.

(Signed) ROYAL E. ROBBINS,
FRED. L. AMES,
F. E. SICKELS,
Committee.

(Endorsed:) No. 1195. Sept. T., 1875. Filed November 17, 1875.

179 And now, to wit, November 17, 1875, affidavit of Rowland G. Hazard filed in the following words, to wit:

In the Court of Common Pleas, No. 2, of Philadelphia County. In Equity.

Between—

ROWLAND G. HAZARD, Plaintiff, and THE CREDIT MOBILIER OF AMERICA, ROYAL E. Robbins, Ezra H. Baker, Frederick L. Ames, Theodore E. Sickels, Paul Pohl, Jr., C. M. Ghriskey, and F. Herbert Janvier, Directors of the said The Credit Mobilier of America, and The Union Pacific Railroad Company, Defendants.	Of Sept. Term, 1875. No. 1195.

Affidavit of Rowland G. Hazard.

ROWLAND G. HAZARD, being duly affirmed, says:

1. I became a stockholder in the Credit Mobilier of America about the — day of ——, in the year 1865, being then the owner of one thousand shares of stock, and my interest has since been increased to over sixteen hundred shares of the par value of one hundred dollars, which I now hold.

180 2. I was elected a director of said company in the year 1867, and have continued to be such director until the spring of the present year, 1875. In 1873 I sent in my resignation as director, which, however, was not accepted. I afterwards declined to become a director, but no one was elected in my place.

3. The said Credit Mobilier of America had at one time large transactions with the defendant, The Union Pacific Railroad Company. In the year 1868 or prior thereto a settlement was made between the said companies by which the Union Pacific Railroad Company was found to be very largely indebted to the Credit Mobilier of America. On the 4th day of August, 1869, the Union Pacific Railroad Company gave its promissory note to the Credit Mobilier of America, dated, at New York, on that day, for the sum of two millions dollars ($2,000,000), payable on demand, for the greater part of what was then found to be due upon the said settlement. There was also a large indebtedness due by the said Union Pacific Railroad Company to the Credit Mobilier, amounting to over two hundred thousand dollars ($200,000), but which was not liquidated by any note or obligation.

I believe that the said settlement which resulted in the giving of the said note as aforesaid was carefully made between the directors and officers of the said corporation at a time when access was

181 had to the various vouchers, data, and memoranda showing the transactions between the companies, and that the note, at the time it was given, was a *bona fide* existing indebtedness of the Union Pacific Railroad Company to the Credit Mobilier of America.

4. I am informed and believe that the Credit Mobilier of America ceased all active business for some time prior to the 4th of August,

1869, and that no legal action was had upon said note, which continued due and unpaid until some time in the present year, 1875, when suit was brought thereon in a court of record in Boston, in Massachusetts.

A large number of the stockholders of the Credit Mobilier are stockholders in the Union Pacific Railroad Company, and in many cases their interests in the railroad company are greater than they are in the Credit Mobilier. I feared that, for some reason prejudicial to the interests of the Credit Mobilier of America, the said note before referred to of two millions dollars ($2,000,000) would not be collected or steps taken for its recovery before the bar of the statute of limitations, and I urged suit to be brought thereon, which was done, as before stated, a short time before the expiration of six years from its date.

I believe that an attempt is now being made to sacrifice the interests of the Credit Mobilier of America in favor of the
182 interests of the Union Pacific Railroad Company, and I give the following reasons in support of this charge:

1. A majority of the present directors of the said company, to wit, those resident in the State of Pennsylvania, have little or no stock of the Credit Mobilier of America. F. Herbert Janvier has no stock; Paul Pohl, Jr., has but six shares of stock; Theodore E. Sickels has no stock and is the principal engineer of the Union Pacific Railroad Company; and C. M. Ghriskey has no stock, or had none at a very recent date. Of the non-resident directors Frederick L. Ames is the owner of stock in both companies, but I am informed and believe that he is the owner of a much larger interest in the Union Pacific Railroad Company than in the Credit Mobilier of America. Royal E. Robbins is a large stockholder in the Union Pacific Railroad Company, owning, as I am informed and believe, five thousand five hundred (5,500) shares of stock of said company. Ezra H. Baker, the remaining director, is a large shareholder in the Union Pacific Railroad Company, having nine thousand two hundred and fifty-four (9,254) shares therein and but six hundred and twenty-three (623) shares in the Credit Mobilier. It will thus be seen that the board of directors has a preponderating interest against the Credit Mobilier of America in any transactions with the Union Pacific Rail-
183 road Company.

2. By a resolution of the board of directors of the Credit Mobilier of America passed the 29th day of July, A. D. 1875, Royal E. Robbins, Frederick L. Ames, and Theodore E. Sickels were appointed a committee to confer with a committee of the directors of the Union Pacific Railroad Company for the alleged purpose of arranging all matters in dispute between them. They have recently submitted a report, by which it is attempted to open the settlement between the said companies made more than six years ago and to bring the Credit Mobilier of America in debt to the Union Pacific Railroad Company by reason of those old transactions. A copy of the report is annexed to the bill and is asked to be taken as part thereof. I have not seen the contract accompanying the said report, not having been able to obtain a copy of the same, but am in-

formed and believe and now state that its effect will be to cancel and give up the before-mentioned note of two million dollars ($2,000,000) made by the Union Pacific Railroad Company to cancel all other indebtedness from this company to the Credit Mobilier of America, and to give up the title to the lands occupied by the depot and ground at the eastern terminus of the Union Pacific Railroad
184 Company, on the Missouri river, for a nominal sum of money, and in effect to strip the Credit Mobilier of America of all its rights as a creditor against the Union Pacific Railroad Company.

7. I believe that the items of said set-off in the report of the committee of three, above mentioned, claimed by the committee of the Union Pacific Railroad Company are not valid items of set-off against the Credit Mobilier of America, but, on the contrary, are without foundation.

With regard to the item of two hundred and sixty-eight thousand eight hundred and fifty dollars and seventeen cents ($268,850.17) for preliminary expenses, as to which the committee say "that nothing appears on the records of the directors of the Union Pacific Railroad Company or of the executive committee which sanctions the last item of two hundred and sixty-eight thousand eight hundred and fifty dollars & seventeen cents ($268,850.17) which it is claimed by the Union Pacific committee should be disallowed," I aver that in the year 1870, shortly after Thomas C. Durant had been vice-president of the Union Pacific Railroad Company, and while Sidney Dillon, who is now president of the Union Pacific Railroad Company, was president of the Credit Mobilier, and also a director in the Union Pacific road, the said Durant and Sidney Dillon both swore positively, as witnesses in a suit against said Durant and
185 others instituted by I. P. Hazard and others in the State of Rhode Island, that the said moneys were paid on account of the Union Pacific Railroad Company by the Credit Mobilier of America, and that the payments thereof were acknowledged by the said railroad company and allowed in a general settlement and adjustment of accounts between the two said corporations, having been vouched for, allowed, and adopted by the said railroad company; so that it appears by the sworn testimony of Thomas C. Durant and Sidney Dillon, in the said suit above referred to, that this claim, which the committee say that there is nothing on the books of the Union Pacific Railroad Company to show that the Credit Mobilier is entitled to, was thus deliberately allowed by the Union Pacific Railroad Company as a credit to the Credit Mobilier in a general settlement between the two companies.

With regard to the item of nine hundred and ninety-two thousand six hundred and fifty-eight dollars and fifty-five cents ($992,658.55), called in said report "special account," I have been advised and believe that the said items represent the amount of certain moneys advanced by the Credit Mobilier of America either to the Union Pacific Railroad Company directly or else to the trustees, under the
186 tripartite agreement of October 15th, 1867, and by said trustees spent for and on account of the said railroad, and which the said company repaid to the Credit Mobilier partly in cash or

partly in certain securities, which were accepted in payment by the Credit Mobilier.

The said amount therefore represents merely the repayment to the Credit Mobilier of moneys theretofore advanced by the Credit Mobilier to the Union Pacific Railroad Company, directly or through the intervention of the trustees, under the tripartite agreement, as hereinbefore stated, and that the balance of over two millions of dollars ($2,000,000) or thereabouts due, as aforesaid, to the Credit Mobilier is a balance due wholly independent of the said item, nine hundred and ninety-two thousand six hundred and fifty-eight dollars and fifty-five cents ($992,658.55), and after the payment thereof.

As to the "balance of interest" for two hundred and ninety-three thousand eight hundred and eighty-one dollars and one cent ($293,881.01), I am advised that there is no principle of law or equity which relieves or absolves railroad contractors from being compelled to pay interest on amounts due by them but remaining unpaid, and I believe said item of set-off is wholly fictitious and fraudulent.

With regard to the item of five hundred and fifty-eight
187 thousand three hundred and ninety-seven dollars and fifty-seven cents ($558,397.57), I have been informed and believe that the said amount, if ever expended at all upon said road, was expended after the road had been accepted by the Government of the United States and after all liability on the part of the Credit Mobilier as guarantor or contractor had ceased, and that the Credit Mobilier is not in any way responsible for the payment of the said sum of money so expended by the Union Pacific Railroad Company upon their road, whether by the order of the Government of the United States or not.

With regard to the item of five hundred and forty thousand dollars ($540,000), which, in the report of the committee above mentioned, is headed "damage for non-payment of subscription of two million dollars' ($2,000,000) worth of stock," I have been informed and believe that at one time the Credit Mobilier of America directed its officers to subscribe for two million dollars ($2,000,000) of stock of the Union Pacific Railroad Company, and to receive said stock on account of the indebtedness of the Union Pacific Railroad Company to the Credit Mobilier; that the treasurer or one of the other officers of the Credit Mobilier thereupon, on behalf of the said Credit Mobilier, offered to subscribe for said stock on these terms, and
188 demanded the said two million dollars' ($2,000,000) worth of stock, and that the treasurer of the Union Pacific Railroad Company thereupon refused to receive the said subscription as aforesaid, and that there was no agreement whatever to subscribe for two million dollars' ($2,000,000) worth of stock and no subscription therefor on the part of the said Credit Mobilier of America to the Union Pacific Railroad Company, and I believe that the claim for damages for non-payment of such subscription is wholly inadmissible and fraudulent.

With regard to the item of one hundred and six thousand eight hundred and fourteen dollars and fifty-nine cents ($106,814.59),

headed "cost of iron overestimated," I am now unable to state what the character of the said item of set-off is.

With regard to the Loup Fork bridge, I aver that under the contract under which said bridge was built the contractor was not liable to expend more than eighty-five thousand dollars ($85,000) upon any bridge built along the line of said road, and I have been informed and believe that the said eighty-four thousand four hundred and fifty-five dollars four cents ($85,455.04) was actually expended by said contractor over and above the amount which he was bound under the contract to expend, and for which the Union Pacific Railroad Company was legally liable, and that said claim
189 was a proper and valid claim for extra compensation for moneys spent by the contractor upon the said Loup Fork bridge over and above the amount of eighty-five thousand dollars ($85,000), which, under the terms of his contract, was all that he was obliged to expend thereupon.

With regard to the claim of seventy thousand five hundred and fifty-six dollars and fifty cents ($70,556.50), headed "abandoned line of road," I have been informed and believe that said line of road for which the said seventy thousand five hundred and fifty-six dollars and fifty cents ($70,556.50) is charged was for a certain portion of road built by the contractor, under the direction of the Union Pacific Railroad Company, and afterwards by their direction abandoned for a more practicable and better route, and that the contractor was entitled to the full payment of the amount expended by him in building the first-mentioned line of road.

8. I first learned of this attempt on the part of the board of directors to sacrifice the interests of the Credit Mobilier of America and the stockholders thereof a few days ago, either on the evening of the 9th or the morning of the 10th of the present month of November, 1875, and forthwith came to Philadelphia, where the said company has an office, in order to employ counsel to resist the same.

190 While the Credit Mobilier has an office in Philadelphia, no regular business is transacted there. None of the books of account or other books or original documents of the said Credit Mobilier are kept in Philadelphia, the same being, as I am informed and believe, at the office of the corporation in New York, but copies of a portion of the minutes of the corporation are to be found in the Philadelphia office.

The office of the company in this city is practically only used for occasional meetings of the directors and stockholders for the transaction of occasional business.

9. I believe the whole indebtedness represented by the note of two million dollars ($2,000,000) is an existing valid indebtedness by the Union Pacific Railroad Company to the Credit Mobilier of America, and that the same can be collected in the suit now instituted for the purpose. If this note be given up under the proposed compromise a very large portion of the value of the stock of the Credit Mobilier will be sacrificed.

10. I believe that a meeting of the stockholders of the Credit Mo-

bilier of America will be held at their office in the city of Philadelphia to-day, the 17th day of November, 1875, in order to bring about an attempted ratification of the compromise recommended in the report of the committee before referred to. I am strongly opposed to the same.

191 The whole scheme of the alleged compromise and the contract accompanying the same is a scheme to advance the interests of the Union Pacific Railroad Company and the stockholders thereof at the expense and in fraud of the rights of the Credit Mobilier of America and the stockholders thereof, and is fraudulent.

11. I believe that unless restrained by a court of equity the said ratification will be brought about in violation of the real interests of the Credit Mobilier of America and of the interests of its stockholders.

12. I believe that it is impossible to obtain from the board of directors of the Credit Mobilier of America authority to use the name of the said corporation as a plaintiff in the present suit in order to prevent the wrong about to be perpetrated upon its stockholders, because a majority of the said directors are either directly in the interest of the said the Union Pacific Railroad Company or controlled by persons in the interest of the said railroad company. To ask of the directors the use of the name of the Credit Mobilier of America would, therefore, not only be an idle form, but would, perhaps, enable them to precipitate the proposed illegal action.

13. As proof hereof I aver that I have seen an abstract of the minutes of the meeting of the board of directors of the Credit

192 Mobilier held on the 12th day of October, 1875. By the minutes of said meeting it appears that the report of the committee I have already referred to was read and adopted and the contract approved, subject to the approval of the stockholders. At the said meeting all the directors appear by the minutes to have been present, and none of them appear to have dissented from said action.

ROWLAND G. HAZARD.

Duly affirmed & subscribed this 17th day of November, A. D. 1875, before me.

Sworn in open court.

G. VON NEIDA,
Pro Proth'y.

Endorsed: No. 1195. Sept. —. Filed November 17, 1875.

193 And now, to wit, November 17, 1875, decree entered in the following words, to wit:

At a court of common pleas, No. 2, of Philadelphia county, held Wednesday, November 17th, 1875.

Coram Judge Pratt, room C.

HAZARD
vs.
CREDIT MOBILIER. } S. 175. 1195.

Order for Injunction.

And now, November 17, 1875, this cause coming on to be heard upon a motion for a preliminary injunction, and being spoken to by counsel for the plaintiff and the Credit Mobilier of America, a defendant in the cause, it is ordered that an injunction do forthwith issue, to stand until the further order of the court, enjoining and restraining the directors, officers, and stockholders of the said The Credit Mobilier of America from and against ratifying or carrying into effect in any way the alleged contract of compromise as reported by the committee of directors of the Credit Mobilier of America or any contract or compromise similar to or substantially like the same, and particularly against surrendering, cancelling, releasing, or giving up the note of two million of dollars made and given by the Union Pacific Railroad Company to the Credit Mobilier of America, dated August 4, 1869, and enjoining and restrain-
194 ing the said defendants and each of them from any interference to prevent the collection of the same in the suit now instituted in the State of Massachusetts for this purpose, and that an injunction bond be given by the said plaintiff, Rowland G. Hazard, in the sum of twenty-five hundred dollars, conditioned according to law, and that upon the entering and filing of the saide bond a writ of injunction do forthwith issue, restraining and enjoining the said defendants and every of them in accordance with the terms of this order.

And now, to wit, November 15, 1875, injunction bond filed in the following words, to wit:

Injunction Bond.

Know all men by these presents that we, Richard S. Newbold and Rowland G. Hazard, the said R. S. Newbold, of Montgomery county, Pennsylvania, and the said R. G. Hazard, of Peacedale, Rhode Island, are held and firmly bound unto the Commonwealth of Pennsylvania in the sum of two thousand five hundred dollars, lawful money of the United States of America, to be paid to the said The Commonwealth of Pennsylvania, its certain attorneys or assigns; to which payment, well and truly to be made, we do bind our-
selves and each of us, our and each of our heirs, executors,
195 and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 17th day of November, A. D. 1875.

The condition of this obligation is such — whereas, in a certain suit in equity brought in the court of common pleas, No. 2, of September term, 1875, No. 1195, wherein Rowland G. Hazard, abovenamed, is plaintiff and The Credit Mobilier of America, Royal E. Robbins, Ezra H. Baker, Frederick L. Ames, and others, defendants,

it was so proceeded in that, on the 17th day of November, A. D. 1875, a special injunction was awarded and decreed by the said court, enjoining and restraining the said defendants and every of them, their servants and agents, from ratifying or carrying into effect in any way the alleged contract or compromise as reported by the committee of directors of the Credit Mobilier of America, nor any contract or compromise similar to or substantially like the same, and particularly from surrendering, cancelling, releasing, or giving up the note of two millions of dollars, made and given by the Union Pacific Railroad Company to the Credit Mobilier of America, dated Aug. 4, 1869, and that neither of them in any way interfere to prevent the collection of the same in the suit now instituted for this
196 purpose in the State of Massachusetts, and against doing certain other things therein mentioned: Now, if the said Richard S. Newbold and Rowland G. Hazard, the obligors above named, shall well and truly, at all times hereafter, indemnify the said defendants and every of them for all damages that may be sustained by reason of such injunction, then the above obligation to be void; or else to be and remain in full force and virtue.

R. G. HAZARD. [L. S.]
R. S. NEWBOLD. [L. S.]

SIDNEY BIDDLE.
HENRY C. SMITH.

Approved.

[Endorsed:] No. 1195. September term, 1875. Between Rowland G. Hazard, plaintiff, and The Credit Mobilier of America, Royal E. Robbins, & others, defendants. Injunction bond. Filed Nov. 17th, 1875.

197 COUNTY OF PHILADELPHIA, *ss:*

Special Injunction.

The Commonwealth of Pennsylvania to The Credit Mobilier of America; Royal E. Robbins, Ezra H. Baker, Frederick L. Ames, Theodore E. Sickels, Paul Pohl, Jr., C. M. Ghiskey, F. Herbert Janvier, directors of said Credit Mobilier of America, and the stockholders, and each and every of them, of the said Credit Mobilier of America — The Union Pacific Railroad Company, Greeting:

Whereas Rowland G. Hazard lately—that is to say, in the term of September—exhibited his bill of complaint before the honorable the judges of our court of common pleas, No. 2, for the county aforesaid, asking relief touching the matters therein particularly complained of and at length set forth:

Wherefore, by the consideration of the court aforesaid, we command you and each of you, your servants and agents, that you do not ratify or carry into effect in any way the alleged contract of compromise as reported by the committee of directors of the Credit Mobilier of America, nor any contract or compromise similar to or

substantially like the same, and particularly that you do not surrender, cancel, release, or give up the note of two millions of
198 dollars made and given by the Union Pacific Railroad Company to the Credit Mobilier of America, dated August 4th, 1869, and that neither of you in any way interfere to prevent the collection of the same in the suit now instituted in the State of Massachusetts for this purpose until the further order of said court in the premises.

Witness the Hon. J. I. Clarke Hare, doctor of laws, president of our said court, at Philadelphia, the 17th day of November, A. D. 1875.
[SEAL.]

JAMES W. FLETCHER,
Pro Prothonotary.

Endorsed.

Served the within writ of injunction on the Credit Mobilier of America by giving a true and attested copy of the same to F. Herbert Janvier, secretary of said company and a director thereof, and making known to him the contents of the same on the 17th day of November, 1875.

JOHN J. ROOT.

Sworn and subscribed before me this 19th day of November, 1875.

[SEAL.] J. M. WILLIAMSON.

199 And now, to wit, January 26th, 1878, petition of Tilton E. Doolittle and others, receivers of the Townsend Savings Bank, to intervene filed in the following words, to wit:

In the Court of Common Pleas, No. 2, of Philadelphia County. In Equity.

Between—

ROWLAND G. HAZARD, Plaintiff, and THE CREDIT MOBILIER OF AMERICA, ROYAL E. Robbins, Ezra H. Baker, Frederick L. Ames, Theodore E. Sickels, Paul Pohl, Jr., C. M. Ghriskey, and F. Herbert Janvier, Directors of the said Credit Mobilier of America, and The Union Pacific Railroad Company, Defendants.	Sept. Term, 1875. No. 1195.

To the honorable the judges of the said court, sitting in equity:

The petition of Tilton E. Doolittle, Walter Osborn, and Jared E. Redfield, receivers of the Townsend Savings Bank of New Haven, Conn.—

Respectfully sets forth that on the 17th of November, 1875, a bill in equity, a copy of which is hereto annexed and which your
200 petitioners prays may be taken as part of this petition, was filed by Rowland G. Hazard against the Credit Mobilier of

America, Royal E. Robbins, Ezra H. Baker, Frederick L. Ames, Theodore E. Sickels, Paul Pohl, Jr., C. M. Ghriskey, and F. Herbert Janvier, directors of the said The Credit Mobilier of America, and The Union Pacific Railroad Company, defendants, as well for himself as on behalf of all the stockholders of the Credit Mobilier of America who, contributing to the expense of the said suit, should become parties thereto.

2. That the said bill prays for an injunction to enjoin the stockholders, directors, and officers of the Credit Mobilier of America from ratifying and carrying into effect a certain alleged contract of compromise or any contract or compromise similiar or substantially like the same, and from surrendering, cancelling, releasing, or giving up a certain promissory note for two millions of dollars, made and given by the Union Pacific railroad to the Credit Mobilier of America on the fourth day of August, 1869, and further enjoining and restraining the defendants and each of them from any interference to prevent the collection of the same in the suit now instituted in the State of Massachusetts.

3. The Townsend Savings Bank of New Haven, Connecticut, were at the time of the filing of the said bill, to wit, the 17th of November, 1875, possessed of 725 shares of the stock of the Credit
201 Mobilier of America, the corporation therein named, of the par value of $100 each.

4. That the said Townsend Savings Bank became, on the 28th day of September, 1874, insolvent, and thereupon your petitioners, Walter Osborn, Jard E. Redfield, and Tilton E. Doolittle were duly appointed receivers thereof by the Hon. James Phelps, a judge of the supreme court of the State of Connecticut.

5. That upon their appointment as receivers the said shares of stock of the Credit Mobilier of America above mentioned came into the possession of your petitioners as receivers, and they still continue to hold the same.

6. That on the 17th of November, 1875, a motion was made in this court for a prelimenary injunction on the bill and affidavits filed by the plaintiff in this suit; whereupon the court made an order as follows, to wit:

"And now, November 17th, 1875, this cause coming on to be heard upon a motion for a prelimenary injunction, and being spoken to by counsel for the plaintiff and The Credit Mobilier of America, a defendant in the cause, it is ordered that an injunction do forthwith issue, to stand until the further order of the court, enjoining and restraining the directors, officers, and stockholders of the said The Credit Mobilier of America from and against ratifying or carrying into effect in any way
202 the alleged contract of compromise as reported by the committee of directors of the Credit Mobilier of America or any contract or compromise similar to or substantially like the same, and particularly against surrendering, cancelling, releasing, or giving up the note of two millions of dollars made and given by the Union Pacific Railroad Company to the Credit Mobilier of America, dated Aug. 4th, 1869, and enjoining and restraining the said de-

fendants and each of them from any interference to prevent the collection of the same in the suit now instituted in the State of Massachusetts for this purpose, and that an injunction bond be given by the said plaintiff, Rowland G. Hazard, in the sum of twenty-five hundred dollars, conditioned according to law, and that upon the entering and filing of the said bond a writ of injunction do forthwith issue restraining and enjoining the said defendants and every of them in accordance with the terms of this order."

That your petitioners, as receivers aforesaid, are interested in the said injunction and decree so obtained, and are willing to contribute to the expenses of this suit, and they therefore pray your honorable court to become parties plaintiff thereto.

203 And your orators will ever pray.

WALTER OSBORN,
TILTON E. DOOLITTLE,
JARED E. REDFIELD,
Per T. E. DOOLITTLE,
Receivers of Townsend Savings Bank, New Haven.

GEORGE BIDDLE,
Counsel for Petitioners.

And now, to wit, January 26, 1878, affidavit of Tilton E. Doolittle filed in the following words, to wit:

HAZARD	}	In Equity. C. P., No. 2, of
vs.		Sept. Term, 1875. No.
THE CREDIT MOBILIER OF AMERICA.	}	1195.

TILTON E. DOOLITTLE, being duly sworn, says:

1. I am one of the receivers of the Townsend Savings Bank, New Haven, Connecticut. Walter Osborn and Jared E. Redfield are the other receivers with me. A certified copy of our appointment as receivers is hereto annexed. We have been informed and believe that a bill, a copy of which is annexed to the petition, signed by us, to intervene as a party in the above suit was filed by Row-

204 land G. Hazard against the Credit Mobilier of America and others on the 17th of November, 1875, and that this court made an interlocutory decree, set forth in said petition.

2. The Townsend Savings Bank, New Haven, was, on the 17th of November, 1875, possessed of 725 shares of the stock of the Credit Mobilier of America, the corporation named in the said petition, of the par value of $100 each.

3. That the said Townsend Savings Bank of New Haven became, on the 28th day of September, 1874, insolvent, and thereupon we were duly appointed receivers thereof, as hereinbefore stated.

4. On our appointment as receivers the shares of stock of the Credit Mobilier above mentioned belonging to the Townsend Savings Bank came into our possession as receivers, and we still continue to hold the same.

TILTON E. DOOLITTLE,
Receiver of Townsend Savings Bank of New Haven, Conn.

Duly sworn and subscribed to this 22nd day of January, A. D. 1878, before me, a notary public duly qualified to take depositions, the word "receiver," line 4, p. 1, having "s" first added.

HERBERT C. WARREN,
[SEAL.] *Notary Public.*

205 (Endorsed:) C. P., No. 2. 1195. S., '75. Hazard *vs.* Credit Mobilier. Affidavit of Tilton E. Doolittle. Intervening petition. Filed January 26, 1875.

And now, to wit, January 8, 1878, order for entry of appearance filed in the following words, to wit:

ROWLAND G. HAZARD
vs.
THE CREDIT MOBILIER OF AMERICA *et al.*
} In Equity. C. P., No. 2, of Sept. T., 1875. No. 1195.

Enter my appearance in the above-entitled case for the Townsend Savings Bank of New Haven, Conn., as an intervening plaintiff.
Jan'y 5, 1878.

GEORGE BIDDLE.

To P. C. P.

(Endorsed:) 1195. S., '75. C. P., No. 2. Appearance. Filed Jan. 8, 1878.

206 And now, to wit, June 15th, 1878, petition of Holmer W. Nicholls to intervene as plaintiff filed in the following words, to wit:

In the Court of Common Pleas, No. 2, of Philadelphia County. In Equity.

Between—

ROWLAND G. HAZARD, Plaintiff,
and
THE CREDIT MOBILIER OF AMERICA; ROYAL E. ROBBINS, EZRA H. BAKER, FREDERICK L. AMES, THEODORE E. SICKELS, PAUL POHL, JR., C. M. GHRISKEY, and F. HERBERT JANVIER, Directors of the said The Credit Mobilier of America, and The Union Pacific Railroad Company, Defendants.
} No. 1195. September Term, 1875.

To the honorable the judges of said court, sitting in equity:

The petition of Homer W. Nichols respectfully sets forth—

That on the 17th of November, 1875, a bill in equity, a copy of which is hereunto annexed and which your petitioner prays may be taken as part of this petition, was filed by Rowland G. Hazard against The Credit Mobilier of America; Royal E. Robbins, Ezra H. Baker, Frederick L. Ames, Theodore E. Sickels, Paul Pohl, Jr., C.

M. Ghriskey, and F. Herbert Janvier, directors of the said The Credit Mobilier of America, and The Union Pacific Railroad Company, defendants, as well for himself as on behalf of all the
207 stockholders of the Credit Mobilier of America who, contribute to the expenses of the said suit, should become parties thereto.

2. That the said bill prayed for an injunction to enjoin the stockholders, directors, and officers of the Credit Mobilier of America from ratifying and carrying into effect a certain alleged contract of compromise or any contract of compromise similar or substantially like the same, and from surrendering, cancelling, releasing, or giving up a certain promissory note of two millions of dollars, made and given by the Union Pacific railroad to the Credit Mobilier of America on the fourth day of August, 1869, and further enjoining and restraining the defendants and each of them from any interference to prevent the collection of the same in the suit now instituted in the State of Massachusetts.

That your petitioner, Homer W. Nichols, was, for some time prior to and on the 21st day of December, 1877, possessed of 3,500 full-paid shares of the capital stock of the Credit Mobilier of America, the said corporation herein named, of the par value of $100 each and represented by divers certificates of different amounts and in the names of different persons, which, on the date last mentioned, your petitioner delivered to the transfer agent of said corpora-
208 tion, with the request that the same be transferred to his name, and thereafter received from said agent stock certificate No. 546, standing in the name of your petitioner and representing the whole of the 3,500 shares of the stock aforesaid and dated the 27th day of December, 1877, which certificate and stock he still continues to hold.

That on the 17th day of November, 1875, a motion was made in this court for a preliminary injunction on the bill and affidavits filed by the plaintiff in this suit; whereupon the court made an order as follows, to wit:

"And now, November 17, 1875, this cause coming on to be heard upon a motion for a preliminary injunction, and being spoken to by counsel for the plaintiff and The Credit Mobilier of America, a defendant in the cause, it is ordered that an injunction do forthwith issue, to stand until the further order of the court, enjoining and restraining the directors, officers, and stockholders of the said The Credit Mobilier of America from and against ratifying or carrying into effect in any way the alleged contract of compromise as reported by the committee of directors of the Credit Mobilier of America or any contract or compromise similar to or substantially alike the same, and particularly against surrendering, cancelling, releasing, or giving up the note of two millions of dollars made and given by the Union Pacific Railroad Company to the Credit Mobilier
209 of America, dated Aug. 4, 1869, and enjoining and restraining said defendants and each of them from any interference to prevent the collection of the same in the suit now instituted in the State of Massachusetts for this purpose, and that an injunction

bond be given by the said plaintiff, Rowland G. Hazard, in the sum of twenty-five hundred dollars, conditioned according to law, and that upon the entering and filing of the said bond a writ of injunction do forthwith issue restraining and enjoining the said defendants and every of them in accordance with the terms of this order."

That your petitioner, the said Homer W. Nichols, has held and still holds the said above-mentioned amount of the capital stock of the corporation defendant as aforesaid, is interested in the said injunction and decree so obtained, and is willing to contribute to the expenses of this suit, and he therefore prays your honorable court for permission to become a party plaintiff thereto.

And your petitioner will ever pray.

HOMER W. NICHOLS.

GEORGE BIDDLE,
Counsel for Petitioners.

C. P., No. 2. September Term, '75. In Equity.

HAZARD
vs.
THE CREDIT MOBILIER OF AMERICA. } No. 1195.

210 HOMER W. NICHOLS, being duly sworn, says:

I have been informed and believe that a bill, a copy of which is annexed to the petition signed by me to intervene as a party in the above suit, was filed by Rowland G. Hazard against the Credit Mobilier of America and others on the 17th of November, 1875, and that this court made an interlocutory decree, as set forth in said petition.

2. I was, on the 21st of December, 1877, and for some time prior thereto, possessed of 3,500 full-paid shares of the capital stock of the Credit Mobilier of America, represented by a number of certificates for different amounts in the names of different persons, which I that day caused to be transferred to my own name, and I have ever since been and now am the holder of said 3,500 shares of capital stock of said corporation and hold a certificate therefor in my own name, dated the 27th day of December, 1877.

HOMER W. NICHOLS.

Duly sworn and subscribed this 7th day of June, 1878, before me, a commissioner for the State of Pennsylvania, as witness my hand and official seal.

[SEAL.] CHARLES NETTLETON,
Commissioner for Pennsylvania in New York,
150 Broadway, N. Y. City.

211 Endorsed: 1195. Sept., '75. C. P., 2. Hazard *vs.* The Credit Mobilier of America *et al.* Petition to intervene. Filed June 15th, 1878. George Biddle.

At a court of common pleas, No. 2, for the county of Philadelphia, held Saturday, June 22d, 1878.

Coram Judges Hare, Mitchell, and Fell.

HAZARD *vs.* CREDIT MOBILIER: } ≠ 1195. Sept., '75. Leave granted.

At a court of common pleas, No. 2, for the county of Philadelphia, held Tuesday, December, 3rd, 1878.

Coram Judges Mitchell & Fell.

HAZARD *vs.* CREDIT MOBILIER. } Sept. T., 1875. ≠ 1195.

And now, Dec. 3rd, 1878, on motion of George Biddle, Esq., it is ordered that the petition to intervene, heretofore granted Jan. 26th, 1878, be entered on the docket as granted *nunc pro tunc*, saving all rights which may have meanwhile accrued to any of the parties in above action.

212 And now, to wit, January 18th, 1879, petition of Oliver Ames, 2nd, to intervene filed in the following words, to wit:

In the Court of Common Pleas, No. 2, of Philadelphia County. In Equity.

Between—

ROWLAND S. HAZARD, Plaintiff, and THE CREDIT MOBILIER OF AMERICA; ROYAL E. ROBBINS, EZRA H. BAKER, FREDERICK L. AMES, THEODORE E. SICKELS, PAUL POHL, JR., C. M. GHISKEY, and F. HERBERT JANVIER, Directors of the said The Credit Mobilier of America, and The Union Pacific Railroad Company, Defendants. } Sept. Term, 1875. ≠ 1195.

To the honorable the judges of the said court, sitting in equity:

The petition of Oliver Ames, the Second, respectfully sets forth—

That on the 17th of November, 1875, a bill in equity, a copy of which is hereunto annexed, and which your petitioner prays may be taken as part of this petition, was filed by Rowland G. Hazard against The Credit Mobilier of America; Royal E. Robbins, Ezra H. Baker, Frederick L. Ames, Theodore E. Sickels, Paul Pohl, Jr., C. M. Ghiskey, and F. Herbert Janvier, directors of the said
213 the Credit Mobilier of America, and The Union Pacific Railroad Company, defendants, as well for himself as on behalf of all the stockholders of the Credit Mobilier of America who, contributing to the expenses of the said suit, shall become parties thereto.

2. That the said bill prayed for an injunction to enjoin the stockholders, directors, and officers of the Credit Mobilier of America from ratifying and carrying into effect a certain alleged contract of compromise, or any contract of compromise similar or substantially like the same, and from surrendering, cancelling, releasing, or giving up a certain promissory note for two millions of dollars, made and given by the Union Pacific railroad to the Credit Mobilier of America on the fourth day of August, 1869; and further enjoining and restraining the defendants and each of them from any interference to prevent the collection of the same in the suit now instituted in the State of Massachusetts.

3. That your petitioner, Oliver Ames, the Second, was for sometime prior to and on the 5th day of May, A. D. 1877, the owner and possessor of 131 full-paid shares of the capital stock of the Credit Mobilier of America, the said corporation herein named, of the par value of one hundred dollars each, which said stock is repre-
214 sented by certificates Nos. 542 —, and bearing date May 5th, 1877, respectively.

4. That on the 17th of November, 1875, a motion was made in this court for a preliminary injunction on the bill and affidavits filed by the plaintiff in this suit.

Whereupon the court made an order as follows, to wit:

"And now, November 17th, 1875, this cause coming on to be heard upon a motion for a preliminary injunction, and being spoken to by counsel for the plaintiff, and The Credit Mobilier of America, a defendant in the case, it is ordered that an injunction do forthwith issue, to stand until the further order of the court, enjoining and restraining the directors, officers, and stockholders of the said The Credit Mobilier of America from and against satisfying or carrying into effect in any way the alleged contract of compromise as reported by the committee of directors of the Credit Mobilier of America, or any contract or compromise similar to or substantially like the same, and particularly against surrendering, cancelling, releasing, or giving up the note of two millions of dollars, made and given by the Union Pacific Railroad Company to the Credit Mobilier of America, dated August 4, 1869, and enjoining and restraining the said defendants and each of them from any interference to prevent the collection of the same in the suit now instituted
215 in the State of Massachusetts for this purpose; and that an injunction bond be given by the said plaintiff, Rowland G. Hazard, in the sum of twenty-five hundred dollars, conditioned according to law, and that upon the entering and filing of the said bond a writ of injunction do forthwith issue, restraining and enjoining the said defendants and every of them in accordance with the terms of this order."

5. That your petitioner, the said Oliver Ames, the Second, has held and still holds the said above-mentioned amount of the capital stock of the corporation defendant as aforesaid, is interested in the said injunction and decree so obtained, and is willing to contribute to the expenses of this suit, and he therefore prays your honorable court for permission to become a party plaintiff thereto.

And your petitioner will ever pray.

OLIVER AMES, THE SECOND.

GEORGE BIDDLE,
Counsel for Petitioner.

OLIVER AMES, the Second, being duly sworn, says:

1. I have been informed and believe that a bill, a copy of which is annexed to the petition signed by me to intervene as a
216 party in the above suit, was filed by Rowland G. Hazard against the Credit Mobilier of America and others on the 17th of November, 1875, and that the court made an interlocutory decree, as set forth in said petition.

2. I was, on the 5th day of May, 1877, and for some time prior thereto, the owner and possessor of 131 full-paid shares of the capital stock of the Credit Mobilier of America, represented by a number of certificates, and am still the owner of said 131 shares of capital stock of said corporation, and hold certificates therefor in my own name, dated the 5th day of May, 1877.

OLIVER AMES, 2ND.

COMMONWEALTH OF MASSACHUSETTS, *County of Suffolk:*

Duly sworn & subscribed this 14th day of January, 1879, before me, a notary public in and for said county of Suffolk.

Witness my hand & official seal.

[SEAL.] SAMUEL JENNISON,
Notary Public in and for Suffolk County.

217 At a court of common pleas of Philadelphia county, No. 2, held Saturday, January 18, 1879.

Coram Judges Hare & Fell.

HAZARD
vs.
CREDIT MOBILIER.

And now, January 18th, 1879, on filing petition of Oliver Ames, the 2nd, and on motion of George Biddle, it is ordered that the said Oliver Ames be allowed to intervene.

At a court of common pleas, No. 2, for Philadelphia county, held on Monday, February 3, 1879.

Coram Judge Fell.

HAZARD
vs.
CREDIT MOBILIER.

And now, Feb'y 3rd, 1879, it is ordered, adjudged, and decreed that the prayers of the petition be granted, and that said Homer W. Nicholls and Oliver Ames, the 2nd, be allowed to intervene in the

above cause as parties complainant *nunc pro tunc* as of January 22nd, 1879, without prejudice to intervening rights.

218 And now, to wit, February 9th 1879, petition for the removal of the case to the circuit court of the United States filed in the following words:

In the Court of Common Pleas, No. 2, of Philadelphia County.

ROWLAND G. HAZARD
vs.
THE CREDIT MOBILIER OF AMERICA. } Sept. Term, '75. #1195.

To the honorable the judges of the said court:

The petition of Oliver Ames, 2nd, respectfully represents—

First. That he is a complainant in the above case, having been admitted as a party upon the 18th day of January, A. D. 1879; that he is a citizen of the State of Massachusetts; that, of the other complainants, Rowland G. Hazard is a citizen of the State of Rhode Island; Homer W. Nichols is a citizen of the State of New York, Tilton E. Doolittle, Walter Osborn, and Jared E. Redfield, receivers of the Townsend Savings Bank of New Haven, are citizens of the State of Connecticut; that, of the defendants, The Credit Mobilier of America is a corporation created by and exising under the laws of the State of Pennsylvania; Royal E. Robbins is a citizen of the State of Massachusetts, Ezra H. Baker is a citizen of the State of Massachusetts, Frederick L. Ames is a citizen of the State of Massachusetts, Theodore E. Sickels is a citizen of the State of
219 Pennsylvania, Paul Pohl, Jr., is a citizen of the State of Pennsylvania, C. M. Ghiskey is a citizen of the State of Pennsylvania, F. Herbert Janvier is a citizen of Pennsylvania, and the Union Pacific Railroad Company a corporation created by and existing under the laws of the United States; that the citizenship of the said parties existed as above stated at the time of the commencement of this litigation and has so continued down to the present time, except as to Ezra H. Baker, who is dead.

Second. That the controversy in the above-stated case is of a civil nature, in equity; that the sum in dispute therein exceeds, exclusive of costs, the sum of five hundred dollars; that the first term at which said cause could have been first tried has not elapsed, and that the said cause has not yet been tried.

Third. That the said controversy is wholly between citizens of different States, and is capable of final determination between your petitioner and the said defendants alone without the intervention of the other complainants.

Fourth. That your petitioner is desirous of removing the said cause to the circuit court of the United States for the eastern district of Pennsylvania, under the acts of Congress in such cases made and provided.

220 Fifth. The petitioner therefore prays that upon his filing a bond, with good and sufficient security, for the entering in the circuit court of the United States for the eastern district of Penn-

sylvania, on the first day of its next session, a copy of record in this suit, and to pay all costs that shall be awarded by the said circuit court of the United States in case said court shall hold that said cause was wrongfully removed thereto, to proceed no further herein, and that this cause shall be removed to the said circuit court of the United States for the eastern district of Pennsylvania.

And you petitioners will ever pray, &c.

OLIVER AMES, 2ND,
By his attorney, GEORGE BIDDLE.

(Endorsed:) 1195. Sept. T., 1875. C. P., No. 2. In equity. Oliver Ames *et al. vs.* Credit Mobilier. Petition to remove case to the circuit court of U. S. Filed February 7, 1879.

And now, to wit, Feb'y 7th, 1879, bond filed in the following words, to wit:

Know all men by these presents that we, Harvey Rowland, of the city of Philadelphia, are held and firmly bound unto
221 the Commonwealth of Pennsylvania in the sum of five hundred dollars, lawful money of the United States of America, to be paid to said Commonwealth of Pennsylvania, its certain attorney, successors, or assigns; to which payment, well and truly to be made, we do bind ourselves and each of us and our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals. Dated the 7th day of February, A. D. 1879.

Whereas a suit in equity is now pending in the court of common pleas, No. 2, of Philadelphia county, to September term, 1875, No. 1195, in which Rowland G. Hazard, Tilton E. Doolittle, Walter Osborn, and Jared E. Redfield, receivers of the Townsend Savings Bank of New Haven, Connecticut; Homer W. Nichols, and Oliver Ames, the 2nd, are complainants and The Credit Mobilier of America; Royal E. Robbins, Ezra H. Baker, Frederick L. Ames, Theodore E. Sickels, Paul Pohl, Jr., C. M. Ghiskey, and J. Herbert Janvier, directors of the said Credit Mobilier of America, and The Union Pacific Railroad are defendants; and whereas the said complainant, Oliver Ames, 2nd, is desirous of removing the said cause to the circuit court of the United States for the eastern district of Pennsylvania, under the act of Congress of March 3d, 1875, the
222 condition of this obligation is such that if the said complainant, Oliver Ames, 2nd, shall cause to be entered in the said circuit court of the United States for the eastern district of Pennsylvania, on the first day of its next session, a copy of the record in the aforesaid suit, and shall pay all costs that may be awarded by the said circuit court of the United States if the said court shall hold that the said suit was wrongfully removed thereto, then this obligation to be void, or else to be and remain in full force and virtue.

HARVEY ROWLAND. [SEAL.]

Sealed and delivered in the presence of—the word payments, in the 12th line of the first page, having been first interlined—
JOHN J. WILKINSON. [SEAL.]

(Endorsed:) 1195. September term, 1875. C. P., No. 2. Hazard *vs.* Credit Mobilier. Bond on removal of case to the C. C. U. S. Filed Feb'y 7, 1879.

223 COMMONWEALTH OF PENNSYLVANIA, } *ss:*
Philadelphia County, }

I, Wm. B. Mann, prothonotary of the court of common pleas, No. two, in and for said county, certify that the foregoing is a full and correct copy of the whole record of the case herein stated, wherein Rowland G. Hazard and others are plaintiffs and The Credit Mobilier of America and others are defendants, as the same remains of record before the said court at # 1195 of September term, A. D. 1875.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court the 7th day of February, A. D. 1879.

[L. S. Court of Common Pleas, Philadelphia, Penn.]

(Signed) E. J. LINDSEY,
Pro Prothonotary.

Circuit Court of the United States for the Eastern District of Pennsylvania.

HAZARD *et al. vs.* THE CREDIT MOBILIER OF AMERICA *et al.*

OLIVER AMES, North Easton, Massachusetts, being duly sworn, deposes and says:

224 1. I am owner of 131 shares of the Credit Mobilier of America, and I and Oakes A. Ames, as executors, own in addition 190 shares of the said corporation, and have been holders of such shares since prior to the year 1875. Prior to the year 1867 the Credit Mobilier of America, which is a Pennsylvania corporation, had transactions with the Union Pacific Railroad Company, chartered by an act of Congress of the United States, and on or about the 28th of March, 1867, an account in settlement was taken between the two companies, upon which there was found and agreed to be due from the Union Pacific Railroad Company to the Credit Mobilier $1,994,769.96, and in consideration of and in partial settlement of this sum the Union Pacific Railroad Company thereafter gave a promissory note to the Credit Mobilier, dated August 4, 1869, and payable on demand, for the sum of $2,000,000.

2. At the time of the giving of the said promissory note and for many years thereafter the said Union Pacific Railroad Company was unable to pay the said note, and on the — day of July, 1875, a suit at law was brought upon the said note and account in the supreme judicial court of Massachusetts, in the county of Suffolk.

225 This suit was brought in the name of the Credit Mobilier by the direction of its officers, and the company and its officers have recognized its liability for the costs and expenses

thereof; but this suit has actually been conducted hitherto at the cost and expense of certain stockholders of the Credit Mobilier, many of whom are now petitioners of this suit, and, so far as I know, the Credit Mobilier has never paid or offered to pay or contribute anything toward the expenses of said suit, except until January 10th of the present year, as hereinafter stated.

The officers and a majority of the stockholders of the Credit Mobilier had, at the time the said suit was brought and at the present time, much larger interests in the Union Pacific railroad than they have in the Credit Mobilier, and the Union Pacific Railroad Company, or persons in its behalf and acting in its interest, hold at present a great majority of the stock of the said Credit Mobilier, and have at present the absolute control and management thereof.

The total stock authorized by the charter of the Credit Mobilier is 37,500 shares, of which the Union Pacific Railroad Company, or persons in its behalf and interest, own and control over 24,600. Of the remaining 12,900 shares, 321 are owned by me, either as individual or executor; 3,500 by Homer W. Nichols; 750 by T. E. Doolittle and others, as receivers of the Townsend Savings
226 Bank.

Henry S. McComb, of Delaware, and Welch are also owners of a large number of shares. Some time after the bringing of the suit on the promissory note of $2,000,000, in July, 1875, the directors and managers of the Credit Mobilier, who then had and now have preponderating interests against that company, undertook, against the interests of the company and all such stockholders therein as were not more largely interested in the said railroad, to reopen the settlement and account stated, made on or about the 28th day of March, 1867, between the Credit Mobilier and the Union Pacific Railroad Company, and to attempt to open and unravel the accounts between the said companies, and thereupon to cancel and deliver up to the said Union Pacific Railroad Company, without any consideration, the said promissory note for two million dollars ($2,000,000) and discharge the debt ascertained and agreed to be due by the said account and settlement.

3. At that time Rowland G. Hazard, the plaintiff in this bill, then a stockholder in the Credit Mobilier, brought this bill in equity in the court of common pleas, No. 2, for the city and county of Philadelphia.

On April 10, 1876, the Union Pacific Railroad Company
227 brought a bill in equity in the supreme judicial court of Massachusetts against the Credit Mobilier, alleging that the said note for two million dollars and the debt or demand for which it was given was not justly due, and praying, amongst other things, that the said The Credit Mobilier should be restrained from collecting and enforcing the same, together with other allegations and charges, which, together with the answer of the Credit Mobilier thereto, fully appear by the pleadings in this suit, which is annexed as an exhibit to this affidavit and to which this affiant craves leave to refer as part hereof.

The defense of this suit on behalf and in the name of the Credit Mobilier has been heretofore conducted by the same counsel in the supreme judicial court of Massachusetts who have conducted the prosecution of the action at law on the promissory note for two million dollars, but at the expense of the same stockholders. It was substantially arranged by the respective counsel in these suits, both of the Credit Mobilier and of the Union Pacific Railroad Company, that all these matters should be determined in the above-mentioned suit in Massachusetts, and much evidence has been taken in said suit on both sides, and the case was set down for final hear-
228 ing on January 20th, 1879, in said court.

4. The Credit Mobilier ceased all active business prior to the year 1869, and, so far as I know and believe, has no other duty than that of winding up—that is to say, in collecting its debts and paying its creditors and distributing its surplus assets among its stockholders—and the aforesaid promissory note of two millions of dollars, together with a claim for some seven hundred thousand dollars for lands sold by the said Credit Mobilier to the Union Pacific Railroad Company at the western terminus thereof, at Omaha, constitute substantially the only assets of the company.

In the year 1872, as stated in the bill in this case, a petition was presented to the court of common pleas of Philadelphia county by the Credit Mobilier; setting forth, amongst other things, that it had not prior to the year 1868 transacted business other than collecting its assets, paying its previous liabilities and expenses of litigation, and that it then had no function to fulfill other than to collect its assets and distribute them amongst its creditors and divide the surplus among its stockholders. I am informed and believe that this petition was refused by the said court, amongst other reasons, because the court was unable to make such a decree until the
229 court was enabled to make distribution among the coshareholders of what remained of the assets after payment of creditors, and I pray leave to refer to the record of said suit and the pleadings therein and the evidence taken therein, which are to be found in the matter of the petition of the Credit Mobilier for dissolution thereof, of — term of 18–, No. —, in the court of common pleas of Philadelphia county, and to the opinion of Judge Allison, the president judge of the said court, who delivered the opinion thereof in the said matter. (See opinion of Allison, P. J., 30 Legal Intelligencer, p. 34.)

5. This note for $2,000,000 was given by the Union Pacific Railroad Company after full consultation with and with the full knowledge of the directors of both corporations, viz., the Union Pacific Railroad Company and the Credit Mobilier. No idea of contesting the validity or binding force of this obligation was ever entertained, so far as I know, and certainly never suggested for many years after it was executed and delivered. On the contrary, recognizing its validity, the directors of the Union Pacific Railroad Company made such financial arrangements as they could to meet and pay off this note on the following several occasions, each several years apart, stated by Bushnell in his testimony under oath in the suit

commenced by Union Pacific Railroad Company *vs.* The Credit Mobilier in Boston, Massachusetts, above mentioned:

"Int. 20. During your membership of either of said boards and after the settlement of March, 1867, between the two corporations, was the subject of the claim of the Credit Mobilier on the Union Pacific railroad ever brought up and acted upon by either of said boards; and, if so, what action was taken in relation thereto?

"Ans. While I was a member of the board and after the settlement of March, 1867, the claim of the Credit Mobilier on the Union Pacific was frequently brought up and discussed in the board and in the executive committee. The first definite action that was taken upon it by the executive committee or the board was when Mr. Sidney Dillon was president of the Credit Mobilier. At his request the executive committee of the Union Pacific instructed Oliver Ames, then president of the Union Pacific, to give the note of the Union Pacific Railroad Company to Mr. Dillon, as president of the Credit Mobilier, on account of the balance due from the Union Pacific to the Credit Mobilier. This was done at the company's office, Sears' building, Boston, during a session of the executive committee at which I was present—Oliver Ames, president; John
231 Duff, member of said committee; Sidney Dillon, Elisha Atkins, and several other members of the board being present also. The note was executed and delivered to Mr. Dillon then and there, and to the best of my recollection was endorsed or guaranteed by several members of the board, or some obligation was given in connection therewith.

"Int. 21. Why was not the claim of the Credit Mobilier on the Union Pacific railroad paid by the latter corporation?

"Ans. For want of money.

"Int. 22. Was any, and if any, what, provision ever made for its payment, and why was such provision, if any was made, never employed for that purpose? State in full detail all the provisions, if any, that were ever made and the reasons why they were not applied to the payment of the claim.

"Ans. Provision was made for its payment three separate times.

"First. In the issue of land-grant bonds of the Union Pacific Company. We made said issue sufficiently large, according to our estimates, to pay all the construction debts of the Union Pacific Railroad Company, including the balance due the Credit Mobilier; but before we had disposed of the land-grant bonds and some ten million of first-mortgage bonds we were overtaken by what
232 is generally known as 'the James Fisk raid,' compelling us to submit to a loss in disposing of said securities and in other ways of about $7,500,000. This prevented the use of any portion of the land-grant bonds to pay the Credit Mobilier.

"Second. In the summer of 1869 we decided on the issue of $10,000,000 ten per cent. five years income bonds, $7,500,000 to be used in liquidating the obligation of the Union Pacific Railroad Company under what is known as the Davis contract, and providing $2,500,000 for use in settling with the Credit Mobilier of America. This latter amount was not used for that purpose, because the earn-

ings of the Union Pacific railroad began to fall off in the latter part of 1869, through 1870, so that a large part of the proceeds of said $2,500,000 of bonds were used to meet the maturing interest on the bonds of the company already issued.

"Third. In the issuing of the sinking-fund bonds, eight per cents., in fixing on the amount of $16,000,000, or whatever the amount was, the purpose of said issue and authority for the same, under the special act of Congress forbidding the issue of any bonds only to provide for an outstanding liability of the company, was to redeem the $10,000,000 of maturing ten per cents. and to provide for paying the balance due the Credit Mobilier of America. The amount
232½ of the issue of these sinking-fund bonds was fixed upon with this purpose in view.

"This was done when I was in the board. The issue was not completed until after I had left the board. The reason why the sinking-fund bonds were not applied to the payment of the claim of the Credit Mobilier I cannot give of my own knowledge, because I have not been a member of the board since March, 1874.

"Int. 23. Were you present when the note for $2,000,000 was made? And, if yea, state who else was present and where it was made, and whether the question of making it was discussed, and by whom and in whose hearing, and whether any objection was made to the making of said note; and, if so, by whom. State whether the persons present at the time said note was made, or any of them, were directors or members of the executive committee of the Union Pacific railroad, and whether such persons took part in the discussion and favored or agreed to the issue of said note.

"Ans. I was present when the note inquired of in this interrogatory was made. It was made in the Union Pacific Railroad Company's office in Boston, Sears' building. There was present at the time Mr. Oliver Ames, Sidney Dillon, Elisha Atkinson, John Duff, and several others whose names I cannot now recall. Mr.
233 Ames, Mr. Duff, and myself were members of the executive committee of the Union Pacific Railroad Company. To the best of my recollection, Mr. Dillon was also a member of the executive committee. All the gentlemen I have named were directors of the railroad company. The question of making the note was discussed at the time by all the persons whom I have just named and in the hearing of everybody present. There was no objection made by anybody to the making of the note. All parties present agreed to it and favored its issue.

"Int. 24. State whether or not the making and delivery of said note for $2,000,000 were known to the directors and executive committee of the Union Pacific railroad. State, as fully as you can remember them, the facts on which you base your answer to this question.

"Ans. The note was drawn and signed at that time in the presence of all parties named and all who were present at that meeting. It was also then and there delivered by Mr. Ames to Mr. Dillon as president of the Credit Mobilier, and he delivered it to Mr. Elisha Atkins at the time. All the directors and members of the executive

committee of the Union Pacific Railroad Company who were present at that meeting knew of the transaction, for it was done in their presence. The fact of the issuing of the said note and how
234 to make provision for it were discussed at nearly every quarterly meeting of the full board of directors of the Union Pacific Railroad Company from ——, 1869, to March, 1874, when I left the board. I state this of my own knowledge. I was always present at all quarterly meetings of the board.

"Int. 25. State when the directors or executive committee of the Union Pacific railroad first, to your knowledge, disavowed the liability of that corporation on the note for $2,000,000, or on the loan for which that note was given, and what were the circumstances that led to that disavowal.

"Ans. The liability on the note was never disavowed so long as I was a member of the board of directors of the Union Pacific Railroad Company. After March, 1874, I have had no personal knowledge on the subject, excepting from what I have been told by members of the board since that time, who succeeded me and my associates in the board. To the best of my knowledge, from such information, it was the election of Mr. Jay Gould and his associates that led to the disavowel of the company's liability upon the note. Soon after their election the disavowel was first made of any liability on the note and on the claim for which the note was given.

235 "Int. 26. State whether or not, during the period that you were actively engaged in the management of the Union Pacific railroad, it was usual for that corporation to give notes for its obligations.

"Ans. It was. It was a matter of constant, almost daily, occurrence all through its history, while I was connected with it.

"Int. 27. If you shall have answered the preceding question affirmatively, please to state by whom such notes were commonly signed.

"Ans. Such notes were commonly signed by the president and treasurer or president and assistant treasurer.

"Int. 28. If you shall have said, in answer to your last question, that said notes were commonly signed by the treasurer or by the president and treasurer, will you state how frequently, to your knowledge, such notes were issued and whether they were paid?

"Ans. Such notes were frequently issued. I am not aware of any one not having been paid except this one for $2,000,000."

The above statement of Cornelius S. Bushnell (beginning on page 106, line 6) is taken from the printed testimony in the abovementioned case. The statements therein contained are true.

236 6. The Union Pacific Railroad Company is and has for some time been under the substantial control and management of one Jay Gould, of New York; and the said railroad company, or Gould, at a meeting of the directors of the Credit Mobilier, on the 8th day of May, A. D. 1878, as appears by the records thereof, a copy of which is hereto annexed marked —, caused or procured himself and one G. P. Morosini, who has been in his employ as clerk

for many years, and one William Belden to be chosen the executive committee of the Credit Mobilier. This committee has assumed the full powers of the board of directors of the said company, and, in order to prevent the collection of the note of two millions of dollars due to the Credit Mobilier, held a meeting in the city of New York and, in violation of and contempt of the injunction heretofore granted in this suit, attempted to pass and vote a resolve, a copy of which is hereto annexed, marked —, to wit:

"That the suit of this company against the Union Pacific Railroad Company, now pending in Boston, be discontinued and the treasurer of this company be authorized and directed immediately to proceed to Boston and instruct the counsel of the company to dismiss the same, and settle with him for all services and expenses incurred in said suit."

237 Benjamin F. Ham was the assistant secretary and treasurer of the Credit Mobilier. He accordingly proceeded to Boston, and on January 11th of this year handed to the counsel and attorney of record of the said corporation in the suit on the note for two millions of dollars, and in the equity suit brought by the Union Pacific Railroad Company against the Credit Mobilier, a paper purporting to be an attested copy of this resolution of the said executive committee, and directed the counsel to discontinue the suit brought on the said note. Whereupon, on or about the 20th day of January, 1879, your petitioners and others interested with them intervened in the said equity suit of The Union Pacific Railroad Company *vs.* The Credit Mobilier, and prayed an interlocutory order and injunction of the court restraining the Union Pacific Railroad Company, its servants, agents, attorneys and counsellors-at-law or any of them, from attempting to carry out the attempted vote or resolution, and from discontinuing the said suit heretofore brought on the note for two millions of dollars, and the court did thereupon grant such an interlocutory order and injunction as prayed for, a copy of which is hereunto annexed, marked —.

238 I further aver that the statements made by the officers and directors of the Credit Mobilier in their petition to dissolve in 1872 are substantially true, and that this company is not engaged in any business, and has absolutely abandoned all intention of engaging in any; that its affairs should be wound up by the collection and proper appropriation of its assets, and that the present board of directors are acting in the interest of the Union Pacific Railroad Company for the purpose of releasing the said company from its indebtedness to the Credit Mobilier.

8. I further aver that unless a receiver is appointed by this honorable court to sue for, collect, and get in the assets of the Credit Mobilier, and to distribute the same, under a decree of this honorable court or otherwise, according to law, that there is great danger that all the assets of the company, which I now believe amount to between three and four millions of dollars, will probably be absolutely lost and dissipated. My reasons for averring this are that about two-thirds of the stock of Credit Mobilier are owned and controlled by the said Gould or by the Union Pacific Railway Company, of which

he is the principal stockholder, and which he controls, or else by persons interested in said railroad company, and that no officers or directors of the corporation can be elected excepting such as are nominated by and are in the interest of the said Gould and of the Union Pacific Railroad Company.

9. The directors of the Credit Mobilier are persons having little or no interest in either corporation.

By referring to the minutes of the meeting, dated May 18th, 1878, the names of G. B. Smith, 10 shares; C. H. T. Collis, 10 shares; G. P. Morisini, 10 shares; Solomon Levy, 10 shares, and John Rodgers, 10, appear as directors. It appears upon the minutes that Jay Gould and William Belden waived notice of this meeting. G. P. Morosini is a person who has been for many years, and, I believe, still is, in the private employ of Jay Gould. John Rodgers is the private clerk of R. C. McMurtrie, Esq., counsel for the Credit Mobilier in Philadelphia, and, I believe, has no real interest therein.

The stockholders of the Credit Mobilier interested solely in the said corporation and not interested in the Union Pacific Railroad Company have been for nearly five years in litigation directed to the purpose of collecting the assets of the company, and hitherto have been practically unsuccessful. They are unable to control the actions of the said Credit Mobilier because the majority of those legally and nominally associated with them as partners and joint stockholders therein are really interested against them and are endeavoring by all means known to the law to prevent their realizing and obtaining their share of the assets of the said corporation. They have been unable to use the name of the Credit Mobilier, and if the suit brought on said promissory note of two million of dollars is discontinued, I am advised and believe that I and other stockholders whose interests are identical with mine may have no legal remedy, and I am advised that this may be done unless a receiver is appointed by this honorable court with authority, by and with a permission of the various courts of record of the United States and of the different States, to sue for, receive, and collect all the assets of the company and, amongst others, the said claim of the note of two millions of dollars in Massachusetts.

OLIVER AMES.

Duly sworn & subscribed this — day of Feb'y, 1879, before me.

——— ———,

——— ———.

[Endorsed:] No. 93. October sess., 1878. C. C. U. S., E. D. of Pa. Hazard *vs.* Credit Mobilier. Affidavit of Oliver Ames, 2nd. Filed February 7, 1879.

HAZARD
vs.
CREDIT MOBILIER *et al.*
No. 93. October T., 1878.

And now, this 15th day of February, A. D. 1879, on motion of James E. Gowen and George Biddle, Esqs., counsel for Oliver Ames

et al., the court appoint Oliver Ames to be a receiver of all the franchise and property, real and personal, of every kind whatsoever and wheresoever situated, of the Credit Mobilier of America, and also with power to receive all such property, both real and personal, of every kind whatsoever and wheresoever situated, with power for and in the name of the said The Credit Mobilier of America to sue for all sums of money and all claims whatever due the said company, and for that purpose to employ counsel and attorneys, and also with full authority to demand and receive all sums of money whatever due to the said corporation, and with authority also to prosecute a certain suit brought in one of the courts of Massachusetts in the month of July, 1875, upon a certain promissory note of two millions of dollars made by the said Union Pacific Railroad Company, the defendant, on or about the 4th of August, 1869, and given to the Credit Mobilier, and also to receive all moneys now in bank or in cash, or otherwise howsoever, belonging to the said
242 The Credit Mobilier of America, and to sue for and receive all other sums of money due to the said corporation from the Union Pacific Railroad Company or through any person or persons, corporation, or body politic in law whatsoever, and to hold the same under and subject to the order of this court.

And it is further ordered that as soon as practicable the said receiver do cause an inventory and description to be made of all the property, personal or otherwise, of whatsoever kind belonging to the Credit Mobilier of America, stating its kind, quantity, amount, and situation, and that he make oath to the same and file one copy with the clerk of the court; that the receiver hereby appointed shall keep all moneys he shall receive on deposit in one or more banks and in the jurisdiction of this court to his credit as receiver, and that all amounts received by him from time to time shall be reported to this court.

That the said Credit Mobilier of America, its president, officers, directors, and agents, do at once deliver to the receiver hereby appointed or place and have at his disposal and allow him to do and use all the property of whatsoever kind and the income of the same of which the receiver is hereby appointed now all that may
243 be in the possession or under the control of the said corporation or with authority of the said officers or agents, including the said promissory note for two millions of dollars.

That the receiver hereby appointed do forthwith file his bond to the United States in the sum of ten thousand dollars, with adequate security or securities, conditioned for the faithful performance of his duty as receiver, the same to be endorsed with the approval of a judge of this court, and that this order shall go fully into effect when the said receiver shall have filed his bond.

That this order shall be subject to the right of any party having an interest to be heard, upon being made a party to this suit, and except thereto and ask for a modification thereof.

(Signed) W. McKENNAN,
Cir. Judge.

(Endorsed:) No. 93. October sess., 1878. Hazard *vs.* Credit Mobilier *et al.* Order of court appointing Oliver Ames as receiver. Entered February 17, 1879.

244 *Bond of Oliver Ames, Receiver.*

Know all men by these presents that we, Oliver Ames and Oakes A. Ames, of North Easton, Massachusetts, and Harvey Rowland, of the city of Philadelphia, are held and firmly bound unto the United States of America, their certain attorney, successors, and assigns, in the sum of ten thousand dollars ($10,000), lawful money of the United States; to which payment, well and truly to be made, we do bind ourselves and our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals. Dated the — day of February, A. D. 1879.

The condition of this obligation is such that whereas in a certain suit now pending in the circuit court of the United States for the eastern district of Pennsylvania, in equity, of October sessions, 1878, No. 93, between Rowland G. Hazard, complainant, and Tilton E. Doolittle and others, receivers of the Townsend Savings Bank, and Oliver Ames, and Holmer W. Nichols, intervening petitioners and complainants, and The Credit Mobilier of America, Royal E. Robbins, Ezra H. Baker, and The Union Pacific Railroad Company, a corporation incorporated by the United States of America, defendants, it was so proceeded in that on the 15th day of February,

245 1879, an interlocutory order was made by said court as follows, to wit:

"And now, this 15th day of February, A. D. 1879, on motion of James E. Gowen and George Biddle, Esqs., counsel for Oliver Ames *et al.*, the court appointed Oliver Ames to be a receiver of all the franchise and property, real and personal, of every kind whatsoever and wheresoever situated, of the Credit Mobilier of America; and also with power to receive all such property, both real and personal, of every kind whatsoever and wheresoever situated, with power for and in the name of the said The Credit Mobilier of America to sue for all sums of money and all claims whatever due the said company and for that purpose to employ counsel and attorneys; and also with full authority to demand and receive all sums of money whatever due to the said corporation, and with authority also to prosecute a certain suit brought in one of the courts of Massachusetts, in the month of July, 1875, upon a certain promissory note of two millions of dollars, made by the said Union Pacific Railroad Company, the defendants, on or about the 4th of August, 1869, and given to the Credit Mobilier; and also to receive all moneys now in bank or in cash, or otherwise howsoever, belonging to the said The Credit Mobilier of America, and to sue for and receive all other sums of money due to the said corporation from the Union Pacific Railroad Company, or through any

246 person or persons, corporation or body politic, in law whatsoever, and to hold the same under and subject to the order of this court.

"And it is further ordered that as soon as practicable the said receiver do cause an inventory and description to be made of all the property, personal or otherwise, of whatsoever kind belonging to the Credit Mobilier of America, stating its kind, quantity, amount, and situation, and that he make oath to the same and file one copy with the clerk of the court; that the receiver hereby appointed shall keep all moneys he shall receive on deposit in one or more banks and in the jurisdiction of this court to his credit as receiver, and that all amounts received by him from time to time shall be reported to this court.

"That the said Credit Mobilier of America, its president, officers, directors, and agents, do at once deliver to the receiver hereby appointed or place and have at his disposal and allow him to do and use all the property of whatsoever kind and the income of the same of which the receiver is hereby appointed now all that may be in the possession or under the control of the said corporation, or with the authority of the said officers or agents, including the said promissory note for two millions of dollars.

247 "That the receiver hereby appointed do forthwith file his bond to the United States in the sum of ten thousand dollars, with adequate surety or security, conditioned for the faithful performance of his duty as receiver, the same to be endorsed with the approval of a judge of this court, and that this order shall go fully into effect when the said receiver shall have filed his bond.

"That this order shall be subject to the right of any party having an interest to be heard upon being made a party to this suit and except thereto and ask for a modification thereof."

Now, if the said Oliver Ames shall well and truly at all times faithfully perform his duty as receiver under the above-recited order, this obligation shall be void, or else to remain in full force and virtue.

OLIVER AMES. [SEAL.]
OAKES A. AMES. [SEAL.]
HARVEY ROWLAND. [SEAL.]

Sealed & delivered in the presence of (the word "for," in the last line of the 3rd page, first stricken out and the words "in the sum of" substituted therefor)—

JOHN J. WILKINSON,
As to Harvey Rowland.
J. W. CATHCART,
Witness to O. A. & Oliver Ames.
J. W. TILSON,
To O. & O. A. A.

(Endorsed:) No. 93. October sess., 1878. C. C. U. S., E. D.
248 of Pa. Hazard *vs.* The Credit Mobilier of America. Bond of Oliver Ames, receiver. The within bond and the sureties therein are hereby approved. W. McKennan, cir. judge. Feb'y 22, 1879. Filed February 24th, 1879.

In the Circuit Court of the United States for the Eastern District of Pennsylvania.

HAZARD *et al.*
vs.
THE CREDIT MOBILIER OF AMERICA *et al.*

To the honorable the judges of the said court:

The petition of Oliver Ames respectfully represents—

First. That he was appointed receiver of the Credit Mobilier of America by your honorable court upon the seventeenth day of February, A. D. 1879, and subsequently entered the required se-
249 curity in the office of the clerk of your said court.

Second. That Thomas C. Durant, the former president of the Credit Mobilier of America, now holds the legal title to certain lands situate near Council Bluffs, Pottawattamie county, Iowa, and amounting in all to about three hundred and twenty acres, and certain other lands in the county of Platte and State of Nebraska, amounting to about eighty acres, and certain lots.

Third. That the said lands were acquired by the said Durant with moneys belonging to the said Credit Mobilier, and that various suits are now pending between the said Credit Mobilier and Durant respecting the same, but the said Durant has hitherto refused to convey the same to the said Credit Mobilier.

Fourth. That the said Credit Mobilier has various other claims against the said Durant, amounting to a large sum of money, but the said Durant is insolvent and pecuniarily worthless, which renders it impossible to collect the same.

Fifth. That the said Durant has agreed to convey the lands above mentioned and described to the said Credit Mobilier of America in consideration of the release of the said Durant by the said corporation from all their claims against him.

Sixth. That your petitioner and Jay Gould, the president of the said Credit Mobilier of America, are satisfied that it will be to the advantage of the said corporation to accept the proposition
250 of said Durant and to release their claims against him.

Seventh. That the said Credit Mobilier is without funds, and your petitioner has been advised by his counsel, John F. Dillon, of New York, and George Biddle, of Philadelphia, to accept said Durant's proposition rather than encounter protracted and necessarily expensive litigation, required to obtain title to the said lands, for which they have at present no funds.

Your petitioner therefore prays your honorable court to authorize your petitioner, as receiver of said Credit Mobilier of America, to execute unto the said Durant a full and complete release of all demands against him by the said Credit Mobilier of America, and upon the execution of and delivery by the said Durant of proper legal conveyances of the real estate within mentioned and described *and* to make a proper order and decree to that effect.

And he will ever pray, &c.

GEORGE BIDDLE,
Attorney for Oliver Ames.

Received under order of the circuit court of the United States for the eastern district of Pennsylvania of the Credit Mobilier of America.

251 STATE OF NEW YORK, } ss:
City and County of New York, }

Oliver Ames, being duly sworn according to law, deposes and says—

That he is the receiver of the Credit Mobilier of America, having been appointed on February 15th, A. D. 1879, by order of the United States circuit court for the eastern district of Pennsylvania.

That as receiver he has made examination, by his attorneys, Russell and Putnam, into the matter of the lands belonging to the Credit Mobilier, situated in Iowa and Nebraska, the titles to which are in the name of Thomas C. Durant, trustee, and as a result of such examination and investigation he has reached the conclusion that it will be for the best interest of the Credit Mobilier to give to said Durant a release of claims against him in consideration of receiving from him a transfer of title to the said lands.

OLIVER AMES.

Sworn & subscribed before me this 29th day of July, 1881.
[SEAL.] HENRY KROPF,
(99) *Notary Public, City & County of New York.*

252 The United States Circuit Court for the Eastern District of Pennsylvania.

HAZARD *vs.* THE CREDIT MOBILIER OF AMERICA.

In re the petition of Oliver Ames, as receiver of the Credit Mobilier.

H. C. Crane, being duly sworn, deposeth and saith:

I am a citizen of New York; age, 51; was the assistant treasurer of the Credit Mobilier and acted as treasurer; had charge of the books and accounts of the Credit Mobilier and am familiar with the transactions between Durant and the Credit Mobilier. The disputed transactions between Durant and the Credit Mobilier are mainly three: First, in relation — whether a certain credit of December 1st, 1864, was $30,920.25 or $45,920.28; second, whether, having acted as president of the Credit Mobilier for several years, Durant is entitled to salary, and, if so, at what rate; third, whether Durant is entitled to 1,300 shares of Union Pacific stock and 650 shares of Credit Mobilier stock, which, he alleges, the Credit Mobilier converted to their own use?

In respect to the first item, the books of the Credit Mobilier show

that Durant was entitled to a credit of $30,920.28, as of Dec.
253 1st, 1864. Durant claims $45,920.28. The difference is disputed by the Credit Mobilier and is one of the items in dispute in the Iowa litigation.

2nd. Durant claims a salary for his services as president of the Credit Mobilier at the rate of $25,000 per year for two and a half years, or about $65,000. The Credit Mobilier dispute this item, and the facts in regard thereto are these: Durant did act as president of the Credit Mobilier and has never been paid for his services. The charter of the company, however, provides that the by-laws shall prescribe the compensation of the officers of the company. The by-laws (art. V)—

Provide "that the directors shall fix the salaries of their officers and other agents." The directors never fixed any salary to the office of president during the term Durant was president, nor do the books show that during such time any current charge was made for salary. The question in dispute, therefore, is whether under these circumstances, together with such others as may be shown by one or the other of the parties, he is entitled to salary; and, if so, how much.

3rd. The other item in dispute relates to the alleged conversion of the above amount of Union Pacific stock and Credit Mobilier stock. The Credit Mobilier deny any liability in this respect; Durant asserts such liability; and the Credit Mobilier further claims
that Durant afterwards surrendered the same to the Credit
254 Mobilier. This matter is also in dispute in the Iowa litigation touching the lands and [in] Council Bluffs.

If Durant is right in all the above claims, the Credit Mobilier would owe him about $250,000; if Durant is not entitled to any of the above items, the Credit Mobilier owe him $9,000, supposing the claim not to be barred and supposing that the company have no set-off against it.

Certain lands in the town of Columbus, county of Platte, in the State of Nebraska, and certain other lands in Council Bluffs, Pottawattamie county, Iowa, were purchased and the deeds taken in the name of T. C. Durant, trustee. The Credit Mobilier claims that these lands were purchased with its money, and have brought suit in Iowa and Nebraska to have the trust declared and the lands turned over to it. Durant set up that the Credit Mobilier owed him, in respect of the matters above claimed, a large sum of money; that he was entitled to hold the lands until that sum was paid, which suit has been pending for some time. It is now proposed to settle these matters by Durant turning over the lands in litigation to the Credit Mobilier, ending the litigation and closing the transaction by the execution of mutual releases. The lands are valuable and the matters in dispute old and uncertain — determination; in view of
which, so far as I know, the stockholders of the Credit Mobilier
255 are in favor of the proposed settlement and release. I know of no one who is opposed to it. The settlement would seem to be one in the interest of the Credit Mobilier to make. The Credit Mobilier is not insolvent, and this settlement cannot affect anybody

but the stockholders, who, as I said before, are, so far as I know, all in favor of it.

H. C. CRANE.

Subscribed and sworn to before me this 10th day of October, 1881, at the city, county, and State of New York. In testimony whereof I have hereunto subscribed my name and affixed my notarial seal the day and year aforesaid.

[SEAL.] WM. J. HARDING,
Notary Public, Kings County, New York.

Certificate filed in New York Co.

256 CITY AND COUNTY OF NEW YORK, } ss:
State of New York, }

Jay Gould, of New York, being duly sworn according to law, deposes and says—

That he is the president of the Credit Mobilier of America; that certain lands situated in the State of Iowa, in or near Council Bluffs, in the county of Pottawattamie, consisting of about 320 acres, and certain other lands in the county of Platte, State of Nebraska, consisting of about 80 acres, and certain lots are now held by Thomas C. Durant, trustee, and the title thereto is in his name.

That various litigations are now pending between the said Durant and the Credit Mobilier in respect of the said lands; that the said lands are in reality the property of the Credit Mobilier, the purchase-money therefor having been furnished by the said company.

That hitherto the said Durant has refused to convey the said lands to the Credit Mobilier, but now has agreed so to do upon receipt from the Credit Mobilier of a full release of all their claims against him.

That the said Durant is insolvent and pecuniarily worthless.

JAY GOULD.

Sworn & subscribed before me—

[SEAL.] JAS. M. HAM,
Notary Public, Kings County, N. Y.

Certificate filed in New York county.

257 In the Circuit Court of the United States for the Eastern District of Pennsylvania.

HAZARD *et al.*
vs.
THE CREDIT MOBILIER OF AMERICA. } Affidavit.

STATE OF IOWA, } ss:
County of Pottawattamie, }

The undersigned, being by me first duly sworn, depose and say that they are citizens and residents of Council Bluffs, in the State

of Iowa; that within the corporate limits thereof the lands hereinafter described are situated.

That they have been acquainted with said lands for several years last past, and now have knowledge of their value at the present; that the market price is not less than $100 per acre, or $64,000 for the whole.

The lands hereinbefore referred to are described as follows, to wit:

The northwest one-fourth and the southwest one-fourth of the northeast one-fourth of section two and the east one-half and the southwest one-fourth and the south one-half of the northwest one-fourth of section three, *in* all in township seventy-four north, of range 44 west, situated in the county of Pottawattamie, State
258 of Iowa, being the same lands now and heretofore held by and standing in the name of the said Thomas C. Durant, as trustee, for the use and benefit of the said Credit Mobilier of America.

JOHN T. BALDWIN.
W. SIEDENTOGLE.
J. M. PALMER.

Sworn to before me and signed in my presence this 12th day of September, A. D. 1881.

Witness my hand and seal notarial.

[SEAL.] GEORGE F. WRIGHT,
Notary Public.

259 In the Circuit Court of the United States for the Eastern District of Pennsylvania.

HAZARD *et al.*
vs.
THE CREDIT MOBILIER OF AMERICA. } Affidavit.

STATE OF NEBRASKA, *Platte County,* } *ss:*

J. E. North, J. W. Early, and Gus. G. Becher, being by me duly sworn, depose and say that they are residents and citizens of the city of Columbus, in Platte county, Nebraska; that the lands hereinafter referred to are situated within or in the immediate vicinity of the corporate limits of said city of Columbus; that they have been acquanted with said lands for several years last past, and now have knowledge of their value at the present time; that the market price of said lands at the present time is not less than sixteen thousand six hundred & twenty dollars. The lands hereinbefore referred to are described in the accompanying exhibit, marked "A," which is attached hereto and made a part of this affidavit.

J. E. NORTH.
J. W. EARLY.
GUS. G. BECHER.

Sworn to before me and signed in my presence this 15th day of September, 1881.

[SEAL.] CHARLES A. SPEICE,
Notary Public in and for Platte Co., Neb.

260 The west ½ of the southwest quarter of section seven (7), township seventeen (17) north, range one (1) east; also one lot, number four (4), containing twelve acres; lot five (5), in block two hundred and nine (209); lot one (1), in block two hundred & twenty-five (225); lot seven (7), in block one hundred and fifty-nine (159); lots seven and eight (7 & 8), in block one hundred and twenty-one (121); lots three and four (3 & 4), in block fifty-nine (59); lot three (3), in block eighty (80); lot seven (7), in block two hundred & twenty-five (225); lots five and six (5 & 6), in block one hundred and nine (109); lot seven (7), in block one hundred and twenty-five (125); lot two (2), in block two hundred and seventy-two (272); lot two (2), in block two hundred and fifty-nine (259), and lot two (2), in block two hundred and thirty-four (234); also lot three (3), in block forty-two (42); lots five (5), six (6), seven (7), and (8), in block sixty-seven (67); lots three (3) and four (4), in block one hundred and five (105); lots three and four (3 & 4), in block one hundred and ten (110); lot one (1), in block one hundred and sixty-two (162); lots three and four (3 & 4), in block two hundred and one (201); lot six (6), in block two hundred and eleven (211); lots seven & eight (7 & 8), in block two hundred and fifteen (215): also lot one (1) and two (2),
261 in block eighty-six (86), and lot eight (8), in block forty-seven (47); also the undivided one-half (½) of out-lots eight (8) and nine (9), containing about twenty (20) acres; also the undivided one-half (½) of block eighty-seven (87); lots five and six (5 & 6), in block one hundred and one (101); lot seven (7), in block one hundred and two (102); lot five (5), in block one hundred and twelve (112); lot six (6), in block one hundred and forty-five (145); lots five (5) and six (6), in block one hundred and fifty-four (154); lot one (1), in block one hundred and ninety-nine (199); lots one and six (1 & 6), in block two hundred and eight (208); lot four (4), in block two hundred and twenty-one (221), and lot six (6), in block two hundred and thirty-one (231); also the undivided one-half (½) interest in out-lot number seven (7); also the southeast quarter (¼) of the northwest quarter (¼) of section twenty (20), town. seventeen (17) north, range one (1) east; also the northeast quarter (¼) of the southeast quarter of section twenty-four (24), town. seventeen (17) north, range one (1) west; also the southwest quarter (¼) of the northeast quarter (¼) of section twenty-four (24), town. seventeen north, range one (1) west; also lot eight (8), in block one hundred (100); lot seven (7), in block one hundred and thirteen (113); lot three (3), in block one hundred and fifty-nine (159); lot three (3) and four (4), in block one hundred and ninety (190); also
262 lot three (3) and four (4), in block one hundred and seventy-three (173); lot one (1), in block two hundred and eight (208); lots one (1) and two (2), in block two hundred and eighteen (218); also

the west half (½) of lot eight (8), in block one hundred and sixty-eight (168); lots (2) and three (3), in block two hundred and sixteen (216); lot two (2), in block two hundred and twenty-nine (229); seven (7), block fifty-eight (58); lot four (4), in block seventy-seven (77); lots three (3) and four (4), in block forty-one (41); lot two (2), block one hundred thirteen (113); also lot (3), in block one hundred and fifty (150); also lot one (1), in block two hundred and nine (209); lot seven (7), block one hundred and ninety-five (195); lots one (1) and two (2), block one hundred and seven (107); lots seven (7) and eight (8), block one hundred and ninety-eight (198); also lots seven (7) and 8, block one hundred and eleven (111); lot four (4), block two hundred — (212); lot five (5), block one hundred and eighty-seven (187); lot seven (7), block two hundred and twenty-four (224); lots three (3), five (5), and six (6), block two hundred and thirty-two (232); lots (1), two (2), seven (7), and eight (8), block one hundred and ninety-six (196), all of said pieces and parcels of land being situated in the county of Platte and State of Nebraska aforesaid and being the same lands and premises now standing in
263 the name of the said Thomas C. Durant, trustee.

In the Circuit Court of the United States for the Eastern District of Pennsylvania.

HAZARD *et al.*
vs.
THE CREDIT MOBILIER OF AMERICA.

STATE OF NEBRASKA,
County of Douglas, } *ss:*

Andrew J. Poppleton, being by me first duly sworn, deposes and says that he is the solicitor for the complainant in a certain suit now pending in the circuit court of the United States for the district of Iowa, wherein The Credit Mobilier of America is plaintiff and Thomas C. Durant is defendant.

That said suit was originally commenced in the State court and was by the said defendant, Durant, removed to said United States court; that the object and prayer of said suit is to recover from said Durant a certain tract of land described as follows: Being in the county of Pottawattamie, in the State of Iowa, to wit, the
264 northwest one-fourth and the southwest one-fourth of the northeast one-fourth of section 2, and the east one-half and the southwest one-fourth and the south one-half *and* of the northwest one-fourth of section three (3), all in township seventy-four (74) north, of range forty-four (44) west, situate in the county and State aforesaid, being the same lands and premises now and heretofore held by and standing in the name of the said Thomas C. Durant, as trustee, for the use and benefit of the said Credit Mobilier of America.

That at the date of the commencement of said suit said Durant, in the name of "T. C. Durant, trustee," held the legal title to said

premises; that it is claimed by the plaintiff that said Durant, while an officer of said plaintiff, caused the said premises to be purchased for the use and benefit of plaintiff and to be paid for out of the funds of plaintiff, but caused the title thereto to be taken in the name of T. C. Durant, trustee, and has ever since, though often requested, refused to convey the same to the said Credit Mobilier of America, the rightful owner thereof; that by cross-bill filed in said suit the said Durant set up claims against said Credit Mobilier of America for a large amount, but what exact amount defendant is unable to state.

The testimony in said cause have never been taken and no final decree reached in either case.

ANDREW J. POPPLETON.

265 Subscribed in my presence and sworn to before me this 12th day of September, A. D. 1881, at Omaha, Nebraska.

[SEAL.] THOMAS S. McMURRAY,
Notary Public, Douglas County, Neb.

C. C. U. S. Oct. Sess., 1878.

HAZARD
vs.
CREDIT MOBILIER *et al.* } No. 93.

And now, this 19th day of Oct., 1881, on motion of George Biddle, Esq., of counsel for Oliver Ames, receiver of the Credit Mobilier of America, and upon hearing upon the affidavits presented and filed, the court order and decree that the petitioner, Oliver Ames, receiver of the said Credit Mobilier, be and is hereby authorized to execute unto Thomas C. Durant, formerly president of the said Credit Mobilier, a full and complete release of all demands against him by the said Credit Mobilier, upon the execution and delivery by the said Thomas C. Durant of proper legal conveyances of the real estate in the said petition and affidavits mentioned and described, being real estate situated near Council Bluffs, Pottawattamie county, Iowa, amounting to about three hundred and twenty acres, and certain other lands in the county of Platte, State of Nebraska, and certain lots, all of which are fully described in the affidavits herewith filed.

266 UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, } *sct:*

I, Samuel Bell, clerk of the circuit court of the United States of America for the eastern district of Pennsylvania, in the third circuit, do hereby certify the foregoing to be a true and faithful copy of the original record and proceedings up to October 20th, 1881, in the case of Hazard *vs.* The Credit Mobilier of America *et al.*, No. 93, October sess., 1878, on file and now remaining among the records of the said court in my office.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said court, at Philadelphia, this fifth day of

January, A. D. 1882, and of the Independence of these United States the one hundred and sixth.

[SEAL.] SAMUEL BELL,
Clerk of C. C.

267 II.—*Part of Seventh Plea.*

ROWLAND G. HAZARD

vs.

THE CREDIT MOBILIER OF AMERICA *et al.*

ROWLAND G. HAZARD, the plaintiff above-named, being duly affirmed according to law, deposes and says as follows:

First. I am the complainant in this cause, the bill in which was filed originally in the court of common pleas, No. 2, of Philadelphia county on November 17, 1875, for the purpose of enjoining a settlement upon or compromise of a claim upon a certain note for two million- of dollars given by the Union Pacific Railroad Company to the Credit Mobilier of America, as in the said bill is set forth. An injunction was thereupon issued in accordance with the prayer of the said bill.

Second. At the time the said bill was filed there was pending in the supreme court of the State of Rhode Island a certain cause in equity instituted by one Isaac P. Hazard, of Newport, in that State, on behalf of himself and all other stockholders of the said Credit Mobilier who might elect to intervene and be allowed by the court so to do against one Thomas Durant and others, including the said Credit Mobilier Company of America and the said Union Pacific Railroad Company.

268 This cause was instituted in the year 1868, and its object was to enforce a liability of the said Thomas C. Durant to the said Credit Mobilier Company for the benefit of the stockholders of said company. Certain stockholders of the said company subsequently intervened as parties complainant in the cause, the said plaintiffs being Rowland Hazard, Rowland G. Hazard, Elizabeth Hazard, Anna Hazard, Mary P. Hazard, Elizabeth Hazard, trustee; Anna Horner, Sophia Vernon, Lydia Torry, and Henry Martin. The number of shares of stock held by the said plaintiffs and those who united with him in the said suit was two thousand four hundred and sixty shares.

Third. The aforesaid cause was referred to a master, and early in the present year his report was filed, by which it appears that the said Thomas C. Durant was indebted to the said Credit Mobilier Company in a very large sum of money, amounting to over five hundred thousand dollars, for cash which had been improperly taken by the said Durant from the said company, and to further large sums of money for profits on stock and for other items, for which the said Durant was accountable, amounting in the aggregate to at least five million- of dollars, and possibly to as many millions more. This deponent is unable to state the exact amount, as he has

not before him the master's report, and the copy which he
269 sent for has not yet reached him.

Fourth. In February, 1879, Oliver Ames intervened in this cause, and was, on his motion (as this defendant is informed and believes), appointed receiver thereon. This appointment was made without deponent's knowledge, although he was some time after informed of the same.

Fifth. On October 19th, 1881, on motion of counsel for the receiver, the receiver was authorized by this court to execute to the said Durant, formerly president of the said Credit Mobilier Company, a full and complete release of all demands against him by the company upon the execution and delivery by the said Durant to the company of proper legal conveyances of certain real estate belonging to the said company, and the title to which was held by the said Durant as trustee for said company, but which he had declined to transfer until certain alleged claims against the company by him were paid. This decree was made without any notice whatever to this deponent, and, so far as this deponent knows and believes, without any notice to the other parties, complainants in the said cause in the supreme court of Rhode Island. This deponent first heard of the entry of said decree on Friday, November 4th, 1881, and this deponent came to Philadelphia as soon as his infirmities would permit.

270 Sixth. This deponent avers that, if the said release is allowed to be made and to stand, a very large claim against the said Thomas C. Durant may be given up without any adequate return whatever; that the said settlement would be highly disadvantageous to the interest of the stockholders of the said Credit Mobilier Company, and that much more (to the best of this deponent's knowledge and belief) can be realized by adverse proceedings against the said Durant than by agreeing to said settlement and compromise.

Seventh. This deponent has been shown the affidavits upon which (he is informed) the said order of October 19th, 1881, was made, and particularly the affidavit of H. C. Crane. The said Crane was for many years prior to the year 1868 and subsequent thereto the private secretary and confidential agent of the said T. C. Durant, and was the main witness on the said Durant's behalf in the said suit in Rhode Island, and gave testimony in relation to nearly all of the items which formed the subject of the said suit; yet the said Crane in his said affidavit in this cause makes no mention whatever of the said suit, although at and long prior to the date at which the said affidavit was made the report of the master in said cause had been filed, an agreement (which was made in May, 1881), had been had, and the court was and still is expected to give an early decision therein. None of the affidavits mention the
271 said suit in Rhode Island, although the pendency of the same was not only well known to the said Crane, but also to the said Oliver Ames, and was notorious among all who were interested in the said Credit Mobilier Company.

R. G. HAZARD.

Affirmed and subscribed before me this ninth day of November, A. D. 1881.

[L. S.] HENRY F. WALTON,
Notary Public.

Endorsed: 93. Oct. sess., 1878. C. C. of U. S. In equity. Rowland G. Hazard *vs.* The Credit Mobilier of America, &c. Affidavit of Rowland G. Hazard on motion to vacate order of Oct. 19th, 1881. Filed November 9th, 1881.

272 C. C. of U. S. Oct. Sess., 1878.

HAZARD
vs.
THE CREDIT MOBILIER OF AMERICA. } 93. In Equity.

And now, November 9, 1881, Bispham, for complainant, moves for an order to revoke the decree of the court made in this cause on October 19, 1881, approving a certain settlement and compromise between Oliver Ames, receiver, and one Thomas C. Durant. Whereupon the court order the said motion to be filed, and that it be heard on Monday, November 21st, 1881, proceedings to carry out such compromise (unless the conveyances and releases in such order mentioned have been heretofore actually delivered) to stay in the meanwhile.

(Endorsed:) 93. Oct. sess.; 1878. Hazard *vs.* The Credit Mobilier Company. Motion for order to revoke order of Oct. 19, 1881. Filed November 9, 1881.

273 ROWLAND G. HAZARD
vs.
THE CREDIT MOBILIER OF AMERICA *et al.*

And now, November 21st, 1881, the hearing of the motion to vacate the order of October 19, 1881, in this cause is postponed until further order of the court, proceedings to stay, as specified in said motion, until further order.

(Endorsed:) No. 93. Oct. sess., 1878. C. C. U. S., E. D. of Pa. Hazard *vs.* The Credit Mobilier Co. Order postponing hearing, &c. Entered and filed Nov'r 21st, 1881.

C. C. U. S., Eastern District of Penna., of —— Session, 1878.

HAZARD
vs.
THE CREDIT MOBILIER OF AMERICA and Others. } No. —.

And now, Dec. 7, 1881, on motion of George Tucker Bispham, Esq., for Rowland G. Hazard, the court order that the order heretofore made in this cause on Oct. 19, 1881, be considered as rescinded. And it is further ordered that the application for such order may

be made *de novo*, the deeds heretofore allowed to be made under said order to be held subject to the further order of this court in relation to the confirmation or cancellation thereof.

274 (Endorsed:) No. 93. October sess., 1878. C. C. U. S., E. D. of Pa. Hazard *v.* The Credit Mobilier Co. Order rescinding order of Oct. 19, 1881. Entered & filed Dec. 7th, 1881.

C. C. U. S. October Sess., 1878.

ROWLAND G. HAZARD
v.
THE CREDIT MOBILIER OF AMERICA. } No. 93.

And now, the 20th day of April, A. D. 1882, Oliver Ames, receiver of the Credit Mobilier of America, by leave of court first had and obtained, renews the application heretofore made for the order of October 19th, 1881, upon due notice thereof to Rowland G. Hazard, the plaintiff in the bill in this cause.

I accept service of the notice of the above application on the part of Rowland G. Hazard.

April 19, '82.

GEO. TUCKER BISPHAM.

275 C. C. U. S. October Sess., 1878.

ROWLAND G. HAZARD
vs.
THE CREDIT MOBILIER OF AMERICA. } No. 93.

Whereas the order heretofore made on October 19th, 1881, by this court upon the petition of Oliver Ames, receiver of the Credit Mobilier of America, filed on the 19th day of October, 1881, was ordered to be considered as rescinded, with leave to the said receiver to apply *de novo* for said order: Now, this 20th day of April, A. D. 1882, the court, on motion of George Biddle, counsel for Oliver Ames, receiver of the Credit Mobilier of America, orders that said receiver be at liberty, upon the petition heretofore filed by him on behalf of the Credit Mobilier, to apply *de novo* for the said order of October 19th, 1881, or for such further relief under said petition as the court may be of opinion upon the hearing that said receiver is entitled to.

It is further ordered that J. Rodman Paul, Esq., and Daniel Holsman, Esq., be, and they are hereby, appointed examiners to take the testimony in the above renewed application; appointment as examiners to take effect as of the 1st day of Jan'y, A. D. 1882.

(Endorsed:) C. C. U. S. Oct., 1878. No. 93. Rowland G. Hazard *vs.* The Credit Mobilier of America *et al.* Application for order *de novo*. Entered & filed April 20th, 1882. George Biddle, A. Sydney Biddle, attorneys-at-law, 208 South Fifth street, Philadelphia.

276 & 277 Circuit Court of the United States.

HAZARD *vs.* THE CREDIT MOBILIER CO.

To the honorable the judges of said court:

The petition of Thomas Vernon, executor for Sophia Vernon and Anna Horner, and of Rowland Hazard respectfully showeth as follows:

Your petitioners are parties who have intervened in a certain cause of Hazard *et al. vs.* Durant *et al.* in the supreme court of the State of Rhode Island, and are interested in the event of said suit. They are advised that if any application is made in the present cause for the purpose of approving a settlement between Oliver Ames, receiver of the said Credit Mobilier Co., and the said Thomas C. Durant such application, if granted, may injuriously affect the interest of the petitioners in the said suit in Rhode Island. They desire to intervene in this cause for the purpose, *inter alia*, of opposing any such application, and they pray the court that they may be made parties hereto, so that their rights in the premises may be protected.

And they will ever pray.

THOMAS VERNON.
ROWLAND HAZARD.

GEO. TUCKER BISPHAM,
Att'y for Petitioners.

278 STATE OF NEW YORK, }
City & County of New York, } *ss:*

Thomas Vernon, one of the party petitioners above mentioned, being duly sworn according to law, deposes and says that the facts set forth in the foregoing petition are true, to the best of his knowledge and belief.

THOMAS VERNON.

Sworn to and subscribed before me this 16th day of December, A. D. 1881.

[SEAL.]

GEORGE HILL,
Notary Public, N. Y. Co.

STATE OF RHODE ISLAND, }
Providence County, } *sc:*

Rowland Hazard, one of the party petitioners, being duly sworn according to law, deposes and says that the facts set forth in the foregoing petition are true, to the best of his knowledge and belief.

ROWLAND HAZARD.

Sworn and subscribed before me this 17th day of December, A. D. 1881.

[SEAL.]

CHARLES L. STEERE,
Notary Public.

(Endorsement:) C. C. U. S. Hazard *vs.* The Credit Mobilier *et al.* Petition of Thomas Vernon *et al.* for leave to intervene. Filed April 22d, 1882. Bispham.

279 C. C. of U. S.

HAZARD
vs.
THE CREDIT MOBILIER COMPANY.

And now, April 22nd, 1882, in consideration of the petition of Thomas Vernon and Rowland Hazard, this day submitted, it is ordered and decreed that the said petitioners have leave to intervene in this cause for the protection of their interests, as prayed for in said petition.

(Endorsed:) No. 93. Oct. sess., 1878. C. C. of U. S. Hazard *vs.* The Credit Mobilier Co. Order on petition of Thomas Vernon *et al.* for leave to intervehe. Entered & filed April 22, 1882.

280 Oct. Sess., 1878. C. C. of U. S. In Equity.

ROWLAND G. HAZARD
vs.
THE CREDIT MOBILIER COMPANY. } 93.

And now, May 17th, 1882, Bispham, for complainant, moves for an order on Oliver Ames, receiver, to close his testimony, now being taken under his petition for leave to make a settlement with Thomas C. Durant, within two weeks from this date.

(Endorsed:) 93. October sess., 1878. C. C. of U. S. In equity. Rowland G. Hazard *vs.* The Credit Mobilier Company. Motion for order on Oliver Ames to close his testimony. Filed May 17th, 1882. S. Bell, clerk.

281 HAZARD *vs.* CREDIT MOBILIER COMPANY.

STATE OF RHODE ISLAND, *ss:*

ROWLAND G. HAZARD, being duly affirmed according to law, deposes and says as follows:

First. I am complainant in this cause. I am also a party complainant in a certain cause of Hazard *et al. vs.* Durant *et al.*, pending in the supreme court of the State of Rhode Island. I am opposed to the granting of the prayer of the petition or application which has been made in this cause, by which a settlement of the claims of the Credit Mobilier Company against Thomas C. Durant is sought to be effected. Any such settlement would be highly prejudicial to the interests of the Credit Mobilier Company and to the stockholders thereof.

Second. On the first day of May, A. D. 1882, the said Thomas

C. Durant filed a motion in the suit in Rhode Island, of which the paper marked A, hereunto annexed, is a true copy. By that motion it appears, and I so aver, that the said Durant is endeavoring to take advantage of the order of October 19th, 1881, made in this cause, although the said order was subsequently rescinded and the question of delivery or cancellation of the conveyance executed thereunder was reserved for further consideration of the court.

Third. It is extremely important for the interest of the
282 parties complainant in the suit in Rhode Island that the testimony now being taken under the renewed application for leave to make a settlement with the said Thomas C. Durant, which has been filed in this cause, should be closed at an early day, and that the said application should be promptly heard; otherwise the interests of the said parties in the Rhode Island suit may be seriously damaged by delays

R. G. HAZARD.

Affirmed and subscribed before me this 12th day of May, A. D. 1882.

[SEAL.] J. A. BROWN,
Notary Public.

Copy.

A.

Supreme Court. March T., 1882.

NEWPORT, *sc:*

ISAAC P. HAZARD *et al.*
vs.
THOMAS C. DURANT *et als.* } In Equity.

And now comes the said Thomas C. Durant and moves that he be purged of the contempt in which he has been heretofore adjudged, and for leave to move this court to dismiss this cause, and for reasons of his said motion he respectfully shows the court—

283 First. That the said Isaac P. Hazard and others of the said complainants have been long since dead, and this suit has during all the times hereinafter named been conducted by the complainant, Rowland G. Hazard.

Second. That the said Rowland G. Hazard, on the 17th day of November, A. D. 1875, filed his bill in equity in the court of common pleas (No. 2) for the county of Philadelphia, State of Pennsylvania, on behalf of himself and all other stockholders of the Credit Mobilier of America and against the said Credit Mobilier of America and others; which said bill is hereby made part hereof.

Third. That the said cause was afterwards, to wit, on the 7th day of February, 1879, removed to the circuit court of the United States for the eastern district of Pennsylvania.

Fourth. That on the 15th day of February, 1879, the said circuit court of the United States appointed one Oliver Ames to be a receiver of all the estate, real and personal, of every kind whatever and

wheresoever situate, of the said Credit Mobilier of America; and the said Oliver Ames thereafter, to wit, on October 24th, 1879, gave bond and entered upon the duties of such receiver, and the original record of said appointment is made a part hereof.

Fifth. That thereafter, to wit, October 19th, 1880, on motion of the said receiver, the said circuit court of the United States authorized him, the said receiver, to execute a general release of all claims against the said Thomas C. Durant by the said Credit Mobilier of America in consideration of a conveyance to the said receiver
284 of certain lands mentioned in the order authorizing the same by said Durant.

Sixth. That thereafter, to wit, on the 27th day of October, 1881, your petitioner delivered to the said receiver a conveyance of the lands mentioned in said order of court, and thereupon the said receiver delivered to your petitioner a release of all claims against him held by the said Credit Mobilier.

And your petitioner prays leave to refer to the record of all the aforesaid doings in proof of the same.

Filed May 1st, 1882.

(Signed) THOMAS C. DURANT,
By his att'y, SAMUEL R. HONEY.

Endorsement: 93. October sess., 1878. Hazard *vs.* The Credit Mobilier Co. C. C. of U. S. Affidavit of Rowland G. Hazard. Sur-motion for order to close testimony. Filed May 17th, 1882. S. Bell, clerk.

285 C. C. of U. S. Oct. Sess., 1878. In Equity.

ROWLAND G. HAZARD
vs.
THE CREDIT MOBILIER COMPANY. } No. 93.

And now, to wit, this May 17th, 1882, on motion of George Tucker Bispham, Esq., solicitor for the complainant, it is ordered that the testimony now being taken on behalf of Oliver Ames, receiver of the Credit Mobilier Company, under his petition for leave to make a settlement with Thomas C. Durant, be closed within two weeks from this date.

(Endorsed:) No. 93. Oct. sess., 1878, C. C. U. S., E. D. of Pa. Rowland G. Hazard *vs.* The Credit Mobilier Company. Order to close testimony. Entered May 17th, 1882. S. Bell, clerk.

UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, } *ss:*

I, Samuel Bell, clerk of the circuit court of the United States of America for the eastern district of Pennsylvania, in the third circuit, do hereby certify the foregoing to be a true and faithful copy of the original record and proceedings in the case of Hazard *vs.* The Credit Mobilier of America *et al.*, No. 93, October sess., 1878, since

October 21st, 1881, on file and now remaining among the records of said court in my office.

286 In testimony whereof I have hereunto subscribed my name and affixed the seal of said court, at Philadelphia, this seventh day of September, in the year of our Lord one thousand eight hundred and eighty-two, and of the Independence of these United States the one hundred and seventh.

SAMUEL BELL,
Clerk of C. C.

287 Circuit Court of the United States, District of Rhode Island.

ROWLAND G. HAZARD *et al. vs.* JOHN N. A. GRISWOLD.

Order Sustaining Demurrers.

And said cause was, on the first of July, A. D. 1884, called for hearing upon the demurrers to the defendant's pleas before Gray, justice, and was argued by the counsel for the respective parties; and, on the 4th day of August, 1884, it was ordered that the plaintiffs' demurrers to the defendant's second, third, fourth, fifth, and seventh pleas be sustained.

By the court:

HENRY PITMAN, *Clerk.*

288 *Amended Pleas. Filed Oct. 14th,* 1884.

And now, after order of court sustaining the plaintiff's demurrers to the second, third, fourth, fifth, and seventh pleas as originally filed, and pursuant to stipulation of counsel, dated November 26th, 1883, and obedient to order of court requiring the defendant to file his amended pleas on or before October 15th, 1884, the defendant files the following as his amended third, fourth, fifth, and seventh pleas.

By his attorneys, SAMUEL R. HONEY.
ARNOLD GREEN.

Amended Third Plea.

3d plea. And, for further plea in this behalf, by leave of court first had and obtained, the said defendant says that he ought not to be charged with the said debt by virtue of the said supposed writing obligatory, because he says that the said writing in the said declaration mentioned was obtained from the said defendant by the said plaintiff and by others in collusion with them by fraud, covin, and misrepresentation—that is to say, that heretofore, on the night of Saturday, August 22, 1868, the said Thomas C. Durant, at Newport, in the State of Rhode Island, was arrested on a writ of *ne exeat,*

289 an authenticated copy whereof is produced and made part of this plea, issued from the supreme court of the State of Rhode Island in a suit in equity, wherein one Isaac P. Hazard was complainant and the said Durant and others were respondents, which

said suit is the suit in equity mentioned in the condition of said supposed writing obligatory, and that the plaintiffs, with other persons colluding with them and assisting them as their agents and attorneys, applied to the defendant while the said Durant was so under arrest to become surety on a bail bond to be given by said Durant in accordance with the said writ of *ne exeat*, and the defendant consented and agreed to sign as surety such bail bond; and after the said Durant had been so arrested and while he was so under arrest the plaintiffs, with other persons colluding with them and assisting them as their agents and attorneys and unknown to the defendant, and quite without his knowledge and without giving him any information thereof, entered into an agreement in the words following:

"NEWPORT, *sc:*

"Supreme Court.

"ISAAC P. HAZARD *et al.*
vs.
THOMAS C. DURANT *et al.* } No. 2. In Equity.

"In the above-entitled case it is agreed that the said Thomas C. Durant shall file a bond, with surety, in the penalty marked in the writ of *ne exeat* therein, to abide and perform the orders and decrees of the court in said cause, and that thereupon the writ of *ne exeat* aforesaid shall be discharged, and that the court may enter decree accordingly."

FRANCIS B. PECKHAM,
Compl't's Att'y.
CHAS. C. ZAN LANDT,
Solicitor, with T. C. Durant.

290 And that very early in the morning of Monday, August 24th, 1868, soon after the midnight between Sunday and said Monday, the plaintiffs, with other persons colluding with them and assisting them as their agents and attorneys, presented to the defendant a writing for his signature, falsely representing to him that it was the bail bond which he had agreed to sign, and concealing from him the agreement which they had entered into to discharge the writ of *ne exeat* under which the bail bond which he had agreed to sign was to be given; and the said defendant, relying upon such representations and deceived by such concealment, signed and sealed such writing, being the supposed writing obligatory in the declaration mentioned; and thereafter, on said August 24th, 1868, without the knowledge of the defendant, the said plaintiffs, with other persons colluding with them and assisting them as their agents and attorneys, procured in the said suit in equity wherein the said writ of *ne exeat* had been issued the entry of an order, as follows:

"NEWPORT, *sc:*

"Supreme Court.

"I. P. HAZARD *et al.* } No. 2. In Equity.
vs.
THOS. C. DURANT. }

"Thomas C. Durant, one of the defendants in this suit, having executed and filed a bond, with sureties, to abide and perform the orders and decrees of the court made in this suit, it is now, by consent, ordered that the writ of *ne exeat* heretofore issued
291 be discharged.

"Aug't 24th, 1868.

"E. R. POTTER,
"*Ass. Just. Sup. Court.*"

And the defendant avers that no notice was given to him of the intention to obtain such order nor of such order being made.

And the defendant avers that before signing and sealing said supposed writing obligatory and at the time of so signing and sealing he did not know, nor did he have any means of knowing, of the said agreement to discharge said writ of *ne exeat* nor of the plaintiffs' intention to have the same discharged, but the said agreement was kept secret from him by the plaintiffs and the persons colluding with them and assisting them as their agents and attorneys; and the said supposed writing obligatory was by them and such other persons so with them colluding fraudulently and without the knowledge of the defendant substituted for the bail bond which under the writ of *ne exeat* the defendant had agreed to sign; and the defendant avers that he knew nothing of said agreement to discharge the writ of *ne exeat*, nor of said order of discharge, nor of said fraudulent substitution until many years after the order of discharge had been made, nor was there any way in which the defendant could have gained information of such agreement and discharge and substitution until after said discharge had been made, but in signing
292 and sealing said supposed writing obligatory the said defendant did rely and was compelled to rely on the false representations of the plaintiffs and their agents and attorneys colluding with them and assisting them; that the said supposed writing obligatory was the bail bond which he had agreed to sign under said writ of *ne exeat*, in confidence whereof the defendant signed and sealed said writing, at Newport, in the State of Rhode Island, to wit, at said Providence; wherefore the defendant saith that the said writing in the declaration mentioned was and is void in law, and this he is ready to verify; wherefore he prays judgment if he ought to be charged with the said debt by virtue of the said writing.

Amended Fourth Plea.

4th plea. And, for a further plea in this behalf, by leave of court first had and obtained, the said defendant says that he ought not to

be charged with the said debt by virtue of said writing, because he says that heretofore, on the 22d day of August, A. D. 1868, one Isaac P. Hazard filed a bill of complaint in equity in the supreme court of the State of Rhode Island, in the county of Newport, in behalf of himself and all other stockholders who might join him of a corporation known as the Credit Mobilier of America, against one Thomas C. Durant and others, which bill is the original bill in the suit in equity mentioned in the condition of said supposed writing obligatory, a duly authenticated copy of said bill and of the
293 record of which suit is here produced and made a part of this plea.

And the defendant says that it appears from an inspection of said bill and said record of said suit that the bill contains no allegation sufficient to give to said supreme court jurisdiction thereof or of the matters therein set forth and charged, or of the suit in equity begun by and founded on said bill, wherein a court of equity and said supreme court can or could make any valid order or decree whatever, except an order dismissing said bill.

And the defendant further saith that, in point of fact, the said supreme court had no jurisdiction whatever to entertain said bill and suit, or to adjudicate the matters therein set forth, or to make any decree in the suit in equity begun by and founded on said bill; and the defendant avers—

a. That the home forum of the said Credit Mobilier of America was when the said suit was brought and is in the State of Pennsylvania and not in the State of Rhode Island; that the said Credit Mobilier is a corporation created by the State of Pennsylvania, and is located and doing business in said State of Pennsylvania, and that the matters set forth in said bill in said equity suit are cognizable in the home forum of said Credit Mobilier and not elsewhere.

b. That the said Isaac P. Hazard and the other parties, his complainants in said equity cause, did not, either by themselves or by any one acting for them or for any of them, before bringing
294 said suit in equity, exhaust all the means in their power or that of any of them, to obtain the redress of their or his grievances within the corporation, the said Credit Mobilier of America, or to obtain action in conformity with their wishes or that of any of them; that neither they nor any of them, before bringing the said suit, requested the managing committee of the said Credit Mobilier and its board of directors and its stockholders as a body to bring suit against the said Thomas C. Durant, either in law or equity or otherwise, although it was wholly in the power of them and of any of them to have done so, and no reason existed why the said committee and board of directors and stockholders as a body could not or reasonably should not have been so requested.

c. That in said suit in equity the complainants claimed a decree against the said Thomas C. Durant for certain large sums of money claimed to belong to the said Credit Mobilier, which the said Durant was charged with having fraudulently converted to his own use while an officer of said Credit Mobilier; and the defendant saith that if any such sums of money were fraudulently converted by the

which release the said Durant endeavored to plead in the said suit before the supreme court of Rhode Island, but was not permitted so to do, because he was alleged to be in contempt of said supreme court for violating one of the orders of said court, which thereupon proceeded, notwithstanding the said release, to enter up the supposed decree against the said Durant, which is referred to in the plaintiff's declaration, which said supposed decree relates to the precise claims on which the said release was intended to operate and did operate; and this he is ready to verify. Wherefore he prays judgment if the said plaintiff ought to have or maintain their said action against him.

SAMUEL R. HONEY,
ARNOLD GREEN,
For Defendant.

Motion to Strike out Amended Pleas. Filed November 19th, 1884.

The plaintiffs move that the amended pleas filed in said case by the defendant be stricken out.

E. METCALF, *Pl'ffs' Att'y.*

300 *Order to Strike Out Amended Pleas.*

And said cause was called for hearing upon plaintiffs' motion to strike out defendant's amended pleas on the 29th of November, 1884, and was argued by the counsel for the respective parties, and upon the 30th day of March, 1885, the following order was entered: "Plaintiffs' motion to strike amended pleas from the files is granted."

Stipulation A. Filed March 22d, 1886.

It is stipulated—

I. That a jury trial be waived and said case be tried by the court.

II. That the bond declared on was duly executed.

III. That Thomas C. Durant has not paid the sum required by any decree or any part thereof.

IV. That said Durant has not been in Rhode Island since December 2d, 1882.

V. That said defendant has not produced or offered to produce the body of said Durant since December 2d, 1882, to said supreme court or otherwise.

VI. The defendants offers to prove, and, if competent (which plaintiff denies), it may be assumed, that in the whole course of the proceedings in the cause in equity entitled Isaac P. Hazard *et al. vs.* Thomas C. Durant *et als.* (No. 2), in the supreme court of
301 Rhode Island, there was no trial of the question whether or not the complainants or any of them, or any stockholders of the Credit Mobilier of America, had requested the said corporation or its officers to sue the said Durant for or upon the charges contained in the original bill in said cause or for or upon any of said charges, other than that which is set forth and described in the opinion of

the supreme court of Rhode Island, published in the eleventh volume of Rhode Island Reports, on pages 195 to 209, inclusive, which said opinion and said pages of said volume are hereby made part hereof.

EDWIN METCALF,
Pl'ffs' Att'y.
SAM'L R. HONEY,
Def't's Attorney.

Stipulation B. Filed Feb'y 8th, 1887.

It is stipulated—

That the plaintiffs are able to prove, under the decree of the supreme court of Rhode Island of December 2d, 1882, in the equity suit — Harard *vs.* Durant (No. 2), an amount of damage in excess of the penal sum of the bond declared on in this suit.

302 Also that the bond sued on in this case, Exhibit A to the declaration, was given to relieve Durant from arrest under process issued by the supreme court of Rhode Island in the equity suit in which it entered the alleged decree of December 2d, 1882, Exhibit B to the declaration.

EDWIN METCALF,
Attorney for Plaintiffs.
ARNOLD GREEN,
Attorney for Defendant.

Agreement for Judgment. Filed Feb'y 12th, 1887.

It is agreed that the judgment in said case may be entered for the plaintiff as of February 12th, 1887.

EDWIN METCALF,
Pl'ffs Att'y.
ARNOLD GREENE,
Def't's Att'y.

Judgment.

Whereupon it is considered by the court here that the plaintiffs have and recover of the defendant the sum of sixty-six thousand four hundred and seventy $\frac{00}{100}$ dollars debt and costs.

Entered Feb'y 15th as of Feb'y 12th, 1887.

303 *Petition for Writ of Error. Filed Feb'y 16th*, 1887.

To the justices of the Supreme Court of the United States:

John N. A. Griswold, of the city of New York, in the State of New York, complains that in the record and proceedings, and also in the rendition of judgment in an action between Rowland G. Hazard, Rowland Hazard, Anna Hazard, and Lydia Torry, plaintiffs, and the said John N. A. Griswold, defendant, in the circuit court of the United States for the district of Rhode Island, docketed in said court as law No. 2056, in which judgment, as of February

12th, A. D. 1887, was rendered against him on the 15th day of February, A. D. 1887, manifest error hath intervened to the great damage of the said John N. A. Griswold.

Wherefore he prays that a writ of error may be allowed him, and that such process may issue as may cause the same to be corrected by the Supreme Court of the United States.

By his attorneys, ARNOLD GREEN.
SAMUEL R. HONEY.

Allowed February 16th, 1887, and let a writ of error issue.

G. M. CARPENTER, *J.*

304 *Petition for Approval of Bond, &c. Filed Feb'y 16th*, 1887.

In the above-named case the defendant, John N. A. Griswold, against whom, at the November term, A. D. 1886, of said court, on the fifteenth day of February, A. D. 1887, a judgment as of the twelfth day of February, A. D. 1887, was rendered, respectfully represents that he has prayed for a writ of error to revise said judgment in the Supreme Court of the United States; that he submits to the approval of this court a bond conditioned on his prosecuting said writ of error to effect and to answer all costs and damages if he shall fail to make good his plea; that he prays that the said bond may be approved, and that a citation on said writ of error may issue, directed to Rowland G. Hazard, Rowland Hazard, Anna Hazard, Lydia Torry, as provided by law.

By his attorneys, ARNOLD GREEN.
SAMUEL R. HONEY.

Let citation issue as prayed for.

G. M. CARPENTER, *J.*

305 *Bond on Appeal. Filed Feb'y* 16, 1887.

Know all men by these presents that we, John N. A. Griswold, of New York, in the State of New York, as principal, and Sarah H. Green, of New York, in the State of New York, and George G. Havens, of New York, in the State of New York, as sureties, are held and firmly bound unto Rowland Hazard and Rowland G. Hazard, of South Kingston, in the State of Rhode Island; Anna Hazard, of Newport, in the State of Rhode Island, and Lydia Torry in the full sum of eighty-five thousand dollars, to be paid to the said Rowland Hazard, Rowland G. Hazard, Anna Hazard, and Lydia Torry, their executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this twelfth day of February, anno Domini eighteen hundred and eighty-seven.

Whereas the above-named John N. A. Griswold hath prosecuted a writ of error in the Supreme Court of the United States to reverse the judgment rendered by the circuit court of the United States for

the district of Rhode Island in an action at law brought in the supreme court of the State of Rhode Island by Rowland Hazard, Rowland G. Hazard, Anna Hazard, and Lydia Torry against him,
306 the said John N. A. Griswold, and transferred to the circuit court of the United States for the district of Rhode Island, and in said circuit court docketed as law No. 2056:

Now, therefore, the condition of this obligation is that if the said John N. A. Griswold shall prosecute his said writ of error to effect and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise this obligation shall remain in full force and effect.

J. N. A. GRISWOLD. [SEAL.]
S. H. GREEN. [SEAL.]
GEORGE G. HAVENS. [SEAL.]

Signed & sealed in presence of—
E. HERNSHAW,
As to J. N. A. Griswold.
MARTIN EICHE,
As to S. H. Green.
MARTIN EICHE,
As to G. G. Haven.

I approve the above bond and sureties.

G. M. CARPENTER, *J.*

307 *Assignment of Errors. Filed Feb'y 16th*, 1887.

And for specifications of error in the record of this case the defendant, being the plaintiff in error to the Supreme Court of the United States, says:

1. That the circuit court erred in sustaining the demurrer to the second plea, in sustaining the demurrer to the third plea, in sustaining the demurrer to the fourth plea, in sustaining the demurrer to the fifth plea, in sustaining the demurrer to the seventh plea.

2. That the circuit court erred in striking from the record the amended third plea, in striking from the record the amended fourth plea, in striking from the record the amended fifth plea, in striking from the record the amended seventh plea.

3. That the circuit court erred in refusing to give judgment for the defendant on his eighth plea, in refusing to give judgment for the defendant on his ninth plea, in refusing to give judgment for the defendant on his tenth plea.

4. That the circuit court erred in refusing to give judgment for the defendant on his first plea and in allowing the bond sued on to be presented in evidence, the same not having been stamped according to law.

5. That the circuit court erred in refusing to allow the defendant on the question of the amount for which judgment should be entered for the plaintiffs and execution issue for plaintiffs to set up

and prove the defences set forth in his fourth amended plea, in his third amended plea, in his seventh original plea.

By his attorneys, ARNOLD GREEN.
SAM'L R. HONEY.

308 *Bill of Exceptions.*

1st. The action was debt on a bond brought and duly entered in the supreme court of the State of Rhode Island. In the supreme court of Rhode Island the defendant filed to the declaration ten pleas. The case was, May 5th, A. D. 1883, removed on the defendant's petition to the circuit court of the United States, and in the circuit court the plaintiffs filed demurrers to the defendant's second, third, fourth, fifth, and seventh pleas. These demurrers were sustained, and to the action of the court in sustaining each and all of these demurrers the defendant excepted. The plaintiff replied to the remaining pleas of the defendant. All the pleadings in the case are made a part of this bill of exceptions.

2. Subsequently, and under a stipulation dated November 26th, A. D. 1883, which is a part of the record, the defendant filed in place of the above-named second, third, fourth, fifth, and seventh pleas, respectively, an amended third plea, an amended fourth plea, an amended fifth plea, and an amended seventh plea. The plaintiffs moved the court to strike out all these amended pleas, and this motion and these amended pleas are made a part of this bill of exceptions. The court, against the objection of the defendant, granted the plaintiffs' motion; to the action of the court in striking
309 from the record each and all of these amended pleas the defendant excepted.

3d. A stipulation was filed March 22, 1886, waiving jury trial; which stipulation is made a part of this bill of exceptions. The cause came on for trial before the court under said stipulation. The plaintiffs introduced in evidence, subject to the defendant's objections hereinafter stated, the original bond set forth in their declaration, a duly certified decree of the supreme court of Rhode Island in the case of I. P. Hazard *et al. v.* Thomas C. Durant *et als.*, being the decree referred to in said declaration, and also the two stipulations marked A and B, respectively, copies of which are made a part of this bill of exceptions. The defendant then put *in* the record of said case of I. P. Hazard *et al. vs.* Thomas C. Durant *et als.* in evidence, a copy of which record is made a part of this bill of exceptions, as said record is set out in the defendant's fourth plea as an exhibit thereto. Thereupon the defendant moved for judgment in his favor on his eighth plea, which motion was overruled, and the defendant excepted; and the defendant moved for judgment in his favor on his ninth plea, which motion was overruled, and the defendant excepted; and the defendant moved for judgment in his favor on his tenth plea, which motion was overruled, and the defendant excepted.

4. And on the presentation in evidence by the plaintiffs of
310 the bond sued on, it appearing that the bond bore date

August 24th, A. D. 1886, and that the United States revenue stamps thereon were affixed and cancelled February 12th, 1886, the defendant moved for judgment in his favor on his plea, which motion was overruled, and the defendant excepted. The defendant also objected to the admission in evidence of the bond on the ground that it was not stamped as required by law. The court overruled this objection, and the defendant excepted.

5th. And on the question of the amount for which judgment should be entered and execution issued for the plaintiffs the stipulation filed February 8th, 1887, which is made a part of this bill of exceptions, was submitted to the court, and the defendant offered to prove a state of facts such as is set out in his amended fourth plea, and to prove the defences set up in said amended fourth plea. These offers were objected to by the plaintiffs and were rejected by the court, and the defendant excepted to the action of the court in rejecting the offers; also the defendant offered to prove a state of facts such as is set out in his amended third plea, and to prove the defences set up in said amended third plea. These offers were objected to by the plaintiffs and were rejected by the court, and the defendant excepted to the action of the court in rejecting the offers; also the defendant offered to prove a state of facts such as is set out in his seventh original plea, and to prove the defences
311 set up in said seventh original plea. These offers were objected to by the plaintiffs and were rejected by the court, and the defendant excepted to the action of the court in rejecting the offers.

And the defendant submits this bill of exceptions for allowance.
February 11th, 1887.

ARNOLD GREEN.
SAMUEL R. HONEY.

February 11th, 1887, presented for allowance.
Allowed as of February 11th, 1887.

G. M. CARPENTER, *J.*

312 ROWLAND G. HAZARD *et al. vs.* JOHN N. A. GRISWOLD.

UNITED STATES OF AMERICA, } *ss:*
District of Rhode Island, }

Seal of Circuit Court, Rhode Island. The President of the United States of America to the judges of the circuit — of the United States in and for the district of Rhode Island, Greeting:

Because that in the record and process and also in the recording of the judgment in a suit before you or some of you, between Rowland G. Hazard and Rowland Hazard, of South Kingston, in said State; Anna Hazard, of Newport, in said State, and Lydia Torry, plaintiffs, and John N. A. Griswold, of or commorant of the city and State of New York, in an action of debt, a manifest error has inter-

vened, to the great damage of said defendant, as has in his complaint been stated, and it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done, you are hereby commanded that, if judgment thereof be given, then, under your seal, you distinctly and openly send the record and process in the suit aforesaid, with all things concerning them, and this writ, so that you have
313 the same before the Chief Justice and the associate justices of the Supreme Court of the United States on the second Monday of October next, at Washington, D. C., being the present seat of Government of the United States of America, that, the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the Honorable Morrison R. Waite, our Chief Justice of the Supreme Court, this 16th day of February, A. D. 1887.

HENRY PITMAN,
Clerk U. S. Circuit Court, R. I. Dist.

[Endorsed:] # 2056. Hazard *et al. v.* J. N. A. Griswold. Writ of error.

314 UNITED STATES OF AMERICA, } ss:
District of Rhode Island, }

Seal of Circuit Court, Rhode Island. The President of the United States of America to the marshal of said district or to his deputy, Greeting:

You are hereby requested to make known to Rowland G. Hazard and Rowland Hazard, of South Kingston, in the State of Rhode Island; Anna Hazard, of Newport, in said State, and Lydia Torry that in a certain cause in the circuit court of the United States within and for the district of Rhode Island, wherein they were plaintiffs and John N. A. Griswold, of the city, county, and State of New York, was defendant, wherein judgment was rendered against the said defendant on the 12th day of February, A. D. 1887, the said defendant has this day sued out a writ of error unto the Supreme Court of the United States next to be holden at Washington, in the District of Columbia, on the second Monday of October next.

And the said Rowland G. Hazard, Rowland Hazard, Anna Hazard, and Lydia Torry are therefore cited and admonished to appear at our Supreme Court to show cause, if any there be, why the judgment rendered against the said John N. A. Griswold, in said writ of error mentioned, should not be corrected and why speedy justice should not be rendered to the parties in that behalf.

Witness the seal of our said circuit court and my hand this 16th day of February, A. D. 1887.

G. M. CARPENTER, *J.*

315 RHODE ISLAND DISTRICT:

PROVIDENCE, *March 30th*, 1887.

I have this day made service of this citation on Edwin Metcalf, Esq., the attorney of record for the within-named Rowland G. Haz-

ard, Rowland Hazard, Anna Hazard, and Lydia Torry, by reading the same in his presence and hearing as required.

SAM'L L. BLAISDETT,
U. S. Marshal.

Service	2 00
Copy & travel	1 00
	$3 00

316 UNITED STATES OF AMERICA, } *ss:*
District of Rhode Island, }

CLERK'S OFFICE, U. S. CIRCUIT COURT,
AT PROVIDENCE, *June 4th*, 1887.

I, Henry Pitman, clerk of the circuit court of the United States for the first circuit and district of Rhode Island, in pursuance of the command contained in the within writ of error, do make return thereof and annex thereto and transmit herewith a true copy of the entire record and of all proceedings therein in the cause or suit of Rowland G. Hazard *et al. vs.* John N. A. Griswold, wherein judgment was rendered in said circuit — of the United States.

I also annex the citation served upon the attorney of record of the plaintiffs in said cause upon the issuing of said writ of error, a copy of which writ was lodged in this office on the 16th day of February, 1887, by the plaintiff in error for the adverse party.

Seal of Circuit Court, Rhode Island.

In testimony whereof I have hereunto set the seal of said court and my hand this 4th day of June, A. D. 1887.

HENRY PITMAN, *Clerk.*

Endorsed on cover: Rhode Island C. C. U. S. No. 629. John N. A. Griswold, plaintiff in error, *vs.* Rowland G. Hazard, Rowland Hazard, Anna Hazard, & Lydia Torry. Filed June 22, 1887.

Supreme Court of the United States. October Term, 1888.

JOHN N. A. GRISWOLD, Plaintiff in Error,
vs.
ROWLAND G. HAZARD & *als.*
} No. 343.

Stipulation.

Whereas a certified copy of the bond sued upon in this case as it was when introduced in evidence, including a copy of the revenue stamps and of the certificate of the collector of internal revenue thereon, being the bond referred to in the 4th paragraph of the bill of exceptions of the plaintiff in error, was inadvertently omitted from the record, it is agreed that the copy of said bond hereto annexed and certified to by Henry Pitman, clerk of the United States circuit court for the district of Rhode Island, is a true copy of said bond referred to in said bill of exceptions, and that the same be printed by the clerk of said Supreme Court as a part of the record in this case; and it is also agreed that the date, "August 24th, A. D. 1886," as it is on page 149 of the printed record, shall be corrected so as to read "August 24th, A. D. 1868."

SAM'L R. HONEY,
Att'y for Pl'ff in Error.
ELIAS MERWIN,
Of Counsel with Defendants in Error.

$1.
Int. Revenue Stamp.
C. H. H., Collector.
Feb'y 12, 1886.
$1.

50c.
Int. Rev. Stamp.
C. H. H., Coll.
Feb'y 12, 1886.
50c.

50c.
Int. Rev. Stamp.
C. H. H., Coll.
Feb'y 12, 1886.
50c.

$10.
Int. Rev. Stamp.
C. H. H., Coll.
Feb'y 12, 1886.
$10.

$10.
Int. Rev. Stamp.
C. H. H., Coll.
Feb'y 12, 1886.
$10.

$2.
Int. Rev. Stamp.
C. H. H., Coll.
Feb'y 12, 1886.
$2.

Know all men that we, Thomas C. Durant, as principal, and John N. A. Griswold and S. Dexter Bradford, as sureties, are firmly bound to Isaac P. Hazard, Rowland Hazard, Rowland G. Hazard, Elizabeth Hazard, Elizabeth Hazard, trustee; Anna Hazard, Mary P. Hazard, Lydia Torrey, Sophia Vernon, and Anna Horner in the sum of fifty-three thousand seven hundred and thirty-five dollars, to be paid to said obligees, their executors, administrators, or assigns; to which payment we bind ourselves, our several and respective heirs, executors, and administrators, jointly and severally, hereby.

Sealed with our seals and dated this 24th day of August, A. D. 1868.

The condition of this obligation is that said Thomas C. Durant shall on his part abide and perform the orders and decrees of the supreme court of the State of Rhode Island in the suit in equity of Isaac P. Hazard and others against said Thomas C. Durant and others, now pending in said court within and for the county of Newport.

THOS. C. DURANT.
J. N. A. GRISWOLD.
J. N. A. GRISWOLD.

$1.
Int. Rev. Stamp.
C. H. H., Coll.
Feb'y 12, 1886.
$1.

$2.
Int. Rev. Stamp.
C. H. H., Coll.
Feb'y 12, 1886.
$2.

Executed and delivered in presence of—
FRANCIS B. PECKHAM, JR.

I certify that I have this 12th day of February, A. D. 1886, affixed hereto U. S. internal-revenue stamps of the value of $27.00, furnished by Rowland G. Hazard, a party to this bond, and that he has paid me $54.00 penalty, pursuant to U. S. Revised Statutes, section 3422.

C. H. HENSHAW,
Collector of Int. Rev., Dist. of R. I.

[Endorsed:] Copy. Isaac P. Hazard *et al. vs.* Thomas P. Durant *et al.* *Ne exeat* bond. Filed Aug. 24, 1868. Thos. W. Wood, cl'k.

UNITED STATES OF AMERICA, *District of Rhode Island:*

CLERK'S OFFICE, U. S. CIRCUIT COURT,
AT PROVIDENCE, *March 21st, A. D.* 1890.

I, Henry Pitman, clerk of said court for said district, do hereby certify that the foregoing is a true copy of the original now on file in this office in the case No. 2656, R. G. Hazard *et al. vs.* John N. A. Griswold.

Seal of Circuit Court, Rhode Island.

In testimony whereof I have this day set the seal of said court and my hand on the day and year above written.

HENRY PITMAN, *Clerk.*

[Endorsed:] Sup. Court U. S. 1889, Oct'r term. No. 443. Jno. N. A. Griswold, pl'ff in error, *vs.* Rowland G. Hazard *et al.* Stipulation and addition to record.

[Stamped:] Office Supreme Court U. S. Filed Apr. 1, 1890. James H. McKenney, clerk.

FILED.
MAR 31 1891
JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

No. 343.

JOHN N. A. GRISWOLD,
Plaintiff in Error.

vs.

ROWLAND G. HAZARD et al.

BRIEF FOR PLAINTIFF IN ERROR.

JAMES C. CARTER,
Of Counsel.

ALBERT B. KING, Printer, 89 William St., N. Y.

Supreme Court of the United States.

JOHN N. A. GRISWOLD,
Plaintiff in Error,

vs.

ROWLAND G. HAZARD and others.

This was an action of debt originally brought in the Supreme Court of Rhode Island, and afterwards removed to the U. S. Circuit Court, on a bond in the penal sum of $53,735, executed by Thomas C. Durant, now deceased, as principal, and the plaintiff in error with one S. D. Bradford, now deceased, as sureties, conditioned that the said Durant would "abide and perform the orders and decrees of the "Supreme Court of the State of Rhode Island in "the suit in equity of Isaac P. Hazard and others "against said Thomas C. Durant and others now "pending in said Court within and for the County "of Newport."

The breach alleged was the neglect and refusal of said Durant to perform a decree of that Court made in that suit in December, 1882, adjudging Durant to pay as therein directed the sum of sixteen millions seventy-one thousand six hundred and fifty-nine dollars and ninety-seven cents ($16,071,659.97.)

The defendant having had *oyer* of the condition pleaded *non est factum* and nine special pleas.

The *second* plea sought, by general averments, to raise the defense that the bond was procured by fraud, covin and misrepresentation; but it contained no specification of facts constituting the fraud. (Record, p. 5.) The *third* set forth the *circumstances* under which the bond was given—the arrest of Durant under the *ne exeat*, and a representation to the plaintiff in error that the bond was an ordinary bail bond, and was executed by him upon the strength of that representation—and really presented the important question whether a *surety* could be held liable when he had executed the bond under a misapprehension and under such peculiar circumstances (Record, p. 6). The *fourth* set up an alleged want of jurisdiction of the Supreme Court of Rhode Island in the suit in which the *ne exeat* was issued. The fifth pleaded duress of the *principal*, Durant. The *sixth* set up a *release* to Durant from the plaintiffs below, but one which was executed *before* the judgment in the *ne exeat* suit. The *seventh* pleads a release from a *receiver* of the Credit Mobilier corporation. The *eighth* set up that the pretended decree in the *ne exeat* suit was not in reality a decree, presumably on the prior ground of lack of jurisdiction. The *ninth* set up that the said Supreme Court of Rhode Island had made no orders or decrees in the *ne exeat* suit, presumably on the same ground. The *tenth* pleaded substantially that Durant had performed the orders and decrees in that suit.

To the *second* plea a general demurrer was interposed, which raised the question whether a general plea of fraud without specification of facts was sufficient. To the *third* a demurrer was inter-

posed, assigning as grounds that the plea did not allege that the plaintiff in error was an *illiterate* person who could not read, and also that the plea failed to aver that the alleged false representations were known to be false by the parties making them. (Record, p. 17.) There were also demurrers to the 4th, 5th and 7th pleas. (Record, pp. 18 and 19.) Issue was reached upon the other pleas through replications thereto. (Record, pp. 20 and 21.)

The demurrers were interposed in pursuance of a stipulation, according to which, if the demurrers were sustained, the defendant below might file amended pleas, and if overruled that the plaintiff below might reply thereto. (Record, p. 16.)

The demurrers were upon argument sustained, and thereupon the defendant below filed amended pleas pursuant to the stipulation (Record, pp. 138–144).

These amended pleas were stricken out on the motion of the plaintiffs below apparently on the ground that the decision upon the demurrers really disposed of them, to which action the defendant below, objected and excepted (Record, pp. 144, 148).

The cause went to trial upon the issues of fact, and, a jury having been waived, judgment was rendered for the plaintiff below in the sum of $66,470 (Record, p. 145). The defendant sued out a writ of error.

Specification of the Errors relied upon.

First.—That the Court below erred in sustaining the demurrer to the second original plea (Record, pp. 5, 17, 138).

Second.—That the Court below erred in sustaining the demurrer to the third original plea (Record, pp. 6, 17, 138).

Third.—That the Court erred in striking out the third plea as amended (Record, pp. 138, 144).

Fourth.—That the Court erred in sustaining the demurrer to the fourth original plea (Record, pp. 6, 17, 138).

Fifth.—That the Court erred in striking out the fourth plea as amended (Record, pp. 140, 144).

Sixth.—That the Court erred in sustaining the demurrer to the fifth original plea (Record, pp. 7, 17, 138).

Seventh.—That the Court erred in striking out the fifth plea as amended (Record, pp. 142, 144).

Eighth.—That the Court below erred in not granting at the trial the motion of the plaintiff in error for judgment on his eighth plea (Record, pp. 9, 20, 148).

Ninth.—That the Court below erred in not granting at the trial the motion of the plaintiff in error for judgment on his ninth plea (Record, pp. 9, 20, 148).

First Point.—The defendant in the Court below by his second and third original pleas (Record, pp. 5 and 6), and the third amended plea (Record, p. 138), set up in different forms the defense of fraud and concealment. The second original plea may have been obnoxious to the condemnation of it by the Court as being too general. But the defense interposed by the third plea and more fully set forth in that plea in its amended form (Record, pp. 138, 139), was amply sufficient and well pleaded; and the order striking it out (Record, p 144) was erroneous.

1. It will be observed that the opinion of the Court below was upon the original plea. No opinion appeared to have been given upon granting the order striking out the amended pleas; but this discussion will deal with the plea as amended. The view taken by the Court below of this plea in its original form was that it attempted to set up a defense of fraud and false representation as that defense is made in ordinary cases; and that it was insufficient for the reason that it contained no allegation that the defendant was not capable of reading and understanding the bond. But this view was an entire misapprehension of the nature of the case and of the defense. In ordinary cases, indeed, where a party asserts that he has been deceived and misled into signing an instrument, the legal import of which he did not understand, it must appear that he was

incapable of reading and understanding the paper; but the third plea, both in its original and amended forms, sets up a very different case.

2. The case which it makes is this: that the plaintiff below, having Durant as a prisoner, under a *ne exeat* "*applied to the defendant to become a surety for said Durant* on a bail bond to *be given by said Durant in accordance with the said writ of ne exeat*," that he the said plaintiff, then without the knowledge of the defendant below, entered into an agreement with Durant, which is set forth in the plea (p. 139), by which the writ was to be discharged upon the giving by Durant of a wholly different sort of bond; that afterwards the plaintiff presented to him such different sort of bond representing it to be the *bail bond* which defendant had agreed to sign, but which was, in fact, a bond binding him as surety to *pay* any judgment; and *concealed* from him the fact of the agreement above mentioned; and afterwards without the knowledge of the defendant did procure an order discharging the writ. It charges this action, concealment, etc., of the plaintiff as fraudulent.

Surely these facts, fully admitted by the motion to strike out, were a complete defense to the action.

3. In short, it completely states a case where

a creditor asks a person to assume an attitude of *suretyship* for an alleged debtor then under arrest by virtue of a *ne exeat*, and fraudulently *deceives* and *misleads* him in *two* particulars: *first*, by representing that the sort of suretyship which he wishes him to assume is that of *bail*, obtaining his consent to become such *bail*, and then presenting to him for execution, and procuring his execution of a bond having no resemblance to a bail bond, but one which effectually binds him as *surety* to pay a debt. *Second*, by *concealing* the material circumstance that he had made an agreement with the debtor to *discharge* the *ne exeat*, and subsequently discharging the same in conformity to the agreement.

The learned Court treated this, not as a special case of fraud and concealment in relation to a contract of *suretyship*, where the circumstances were such as to be calculated to *disarm* the surety and throw him off his his guard, but as an ordinary case where the parties are dealing at *arm's length*, and with full notice that each is *to take care of himself*.

It may well be that, in such ordinary cases, if an instrument is prepared by one party and presented to another for execution, and no *device* is resorted to to mislead, the latter cannot set up as a defense that the nature and effect of the instrument was misrepresented to him by the other, if he is capable of reading and understanding the instrument. He is supposed to be as well capable as the other of taking care of himself, and *ordinary contracts* cannot be defeated by pretences,

real or imagined, that one party has been misled by a misconception of the nature of the instrument he has signed.

4. But the contract of suretyship stands on very different grounds. It is one of an extraordinary character for which the surety receives no consideration. It was once held to require *disclosure* as fully as a contract in marine insurance. That doctrine has been modified; but it is settled law that *if the situation is different from what might naturally be expected by the surety*, he is entitled, without asking, to a *voluntary disclosure* of every material circumstance within the knowledge of the creditor.

De Colyar on Guarantees & Prin. & Surety, Am. Ed., p. 367, *et seq.*

Railton *vs.* Mathews, 10 Cl. & Fin., 935.

See also

Williams *vs.* Bagley, Law Rep., 1 H. L., 200, 219.

Brandt on Suretyship, § § 365, 366.

Baylies on Sureties, p. 293.

5. The rule is the same both at equity and at law; and both Courts exercise a concurrent jurisdiction in giving relief. It can be asserted by a plea in a Court of law, as well as by a bill in equity (Lee *vs.* Jones, 17 C. B. N. S., 482), in the former Court to defeat an ac-

tion brought on the instrument, and in the latter, to cancel, or reform it, or enjoin an action upon it. In the case just referred to, which arose on the defense being set up at law, Mr. Justice BLACKBURN thus stated the rule (pp. 502, 503): "But I think both on "authority and on principle, that when the "creditor describes to the proposed sureties "the transaction proposed to be guaranteed "(as in general a creditor does) that descrip- "tion amounts to a representation, or, at "least, is evidence of a representation, that "there is nothing in the transaction that "might not naturally be expected to take "place between the parties to a transaction "such as that described."

Mr. Chief-Justice SHEPLEY has stated the rule with elegant precision and in a manner exceedingly appropriate to the present case: "One, who becomes surety for another, must ordinarily be presumed to do so upon the belief that the transaction between the principal parties is one occurring in the usual course of business of that description, subjecting him only to the ordinary risks attending it; and the party to whom he becomes surety must be presumed to know that such will be his understanding, and that he will act upon it, unless he is informed that there are some extraordinary circumstances affecting the risk. To receive a surety known to be acting upon the belief that there are no unusual circumstances by which his risk will be materially increased, well knowing that there are such circumstances and having a suitable oppor-

tunity to make them known and withholding them, must be regarded as a legal fraud, by which the surety will be relieved from his contract."

Franklin Bank *vs.* Cooper, 36 Me., 179, 197.

6. The concealment of the agreement to discharge the writ, and its subsequent discharge would, be abundantly sufficient to avoid the obligation. The bond, by which this admitted plea the defendant was to give, was a *under* a *ne exeat* writ, which, of course, would leave the writ *in full force*, and secure power over Durant's person. The admission is that at the very time there was a *concealed* agreement to *discharge* the writ.

Says Mr. Justice BAYLEY in Pidcock *vs.* Bishop (3 B. & C., 605, 610): "It is the duty "of a party taking a guarantee to put the "surety in possession of all the facts likely "to affect the degree of his responsibility; "and if he neglect to do so, it is at his peril." In this action, which was at *law*, the surety was held discharged because of a failure to communicate to him the circumstance that the price of the goods to be bought and for which the surety was to be bound was to be above the market price, and the excess to be applied on a former debt.

7. But in the case in question, that of a surety,

even without this particular concealment of a material fact, the fraudulent substitution of a bond totally different from the one agreed to be given would be an abundant ground for relief in equity; and no sound reason is perceived why it should not be equally good as a defense at law. Who will say that it is a satisfactory answer to a man who complains that he has been induced to sign a bond as surety at the request of a creditor, who has fraudulently told him that it was an ordinary bail bond, and subsequently finds out that it is a bond of a very different character; to say that he has nothing to complain of, because he was able to read, and the law regards him also capable of understanding even technical language? The language of V. C. Kindersley in Small *vs.* Currie (2 Drewry, 114), will be accepted as better doctrine: "If, "indeed, the person taking the indemnity "does, either by the *frame of the instru-* "*ment*, or by any *representations* made to "the surety, or in any other manner, mis- "lead the surety *as to the effect of it*, or oc- "casion his misapprehending it, or takes ad- "vantage of his ignorance or distress, or in- "duce him to execute the instrument under "circumstances by which he is deprived of "the means and opportunity of having legal "advice and assistance, or if he knows or "has reason to believe that the surety mis- "apprehends the nature or effect of the in- "strument, and allows him to execute it "without such misapprehension by sufficient "explanations; in any such cases no doubt "a Court of Equity would interfere to pre-

"vent any advantage being taken of a bond "of indemnity so procured."

And we have the authority of Lord Eldon for the doctrine that "at present it is firmly es- "tablished that the same principles which "have been held to discharge the surety in "equity will operate to discharge him also "at law" (Samuel *vs.* Howarth, 3 Miss., 272, 278). And the same authority holds in the same place that if the party comes into equity seeking relief he will not be sent to law; that the jurisdiction is concurrent, and will be administered in either Court.

8. We prefer, indeed, in the present controversy, the relief sought in the equity suit. That is final; but, if right in our legal doctrine, we should have the costs of the present suit.

Second Point.—The fourth plea, both the original and the amended one, embraced a copy of the entire record in the original suit in the Supreme Court of Rhode Island, in which the *ne exeat* was issued, and set up a want of jurisdiction in that Court apparent upon the face of the record as a bar to the action (Record, pp. 6, 140). It will not be doubted that if there was a want of such jurisdiction to the extent of an absence of authority in that Court to

take cognizance of the subject matter of the action, no suit at law can be maintained upon the bond, for two reasons. *First*, the suit of *ne exeat* and consequently the bond, was utterly illegal and void; and *second*, there was no breach of the condition; for no valid decree ever was or could be made in the suit other than a decree dismissing the bill. There was this want of jurisdiction over the subject matter, and it was error to sustain the demurrer to the plea.

1. The real point made by the plea seems to have been missed by the learned Court below. Its opinion assumes that the defect in the bill in the R. I. Supreme Court thus relied upon by the appellant was a failure to charge that the complainants in the suit had not alleged in their bill that they had made an earnest effort to induce the corporation to bring a suit against Durant and that it had refused to comply with such request. This defect would indeed seem, upon a familiar rule, to have rendered the bill demurrable and the decree in it erroneous. The learned Court seems to concede this, but it declares, with apparent reason, that these allegations were not requisite to give the Court jurisdiction over the subject matter. An amendment of the bill would have removed the objection.

   But the real objection made by the plea was that the Court was so wholly destitute of jurisdiction over the *subject matter* that

no bill for the relief sought could be framed which would give the Court jurisdiction.

2. The question thus raised is one of much gravity, and the steps in the argument should be taken with cautious deliberation. It should first be clearly understood precisely what sort of authority the bill in the Supreme Court of Rhode Island assumed that Court to possess and called upon it to exert.

This case may be generally stated within a brief compass. Shortly stated, the substance of the bill is that defendant Durant was the president and principal managing agent of the Credit Mobilier of America, a Pennsylvania corporation; that as such officer and agent he had received large sums of money and property belonging to the corporation which he had wrongfully and fraudulently, upon divers pretexts, appropriated to his own purposes, one of which methods was to pay to that corporation large sums as payments for subscriptions to the stock of that company, which he had caused to be issued to himself; that the corporation was entitled to an account from Durant in respect to all such transactions and to a payment from him of all the money he had received belonging to it, and to a delivery by him of all property belonging to it thus held by Durant, and to have a lien upon all the stock of the corporation issued to Durant to the extent that its own moneys had been used to pay the subscriptions therefor; that

the corporation had neglected and refused to assert against Durant its rights and dues in the premises, and that consequently it was the right of the complainant as a stockholder to invoke the aid of the Court to compel Durant to account and pay over to the corporation, as that corporation might compel him to do, had it performed its duties to its stockholders.

The bill does not assert that there had ever been any dealing or transaction between the complainants and Durant out of which any cause of action could arise in their favor against him directly. It set up debts and dues from Durant to the corporation and none others, and asserted no rights in the complainants which did not equally belong to all other stockholders in the corporation.

2. The above is the general character of this suit ; but its precise nature will not be fully understood until some of its necessary incidents and consequences are considered.

a. It is not the suit of some third person who has had *dealings* with the corporation such as may be had between *natural* persons, and who asserts claims against the corporation such as might be asserted by a natural person ; but it is a *suit* by a *part*—one of the *members*—of the corporation against that corporation, united with other defendants, complaining of its *internal management.*

b. The suit necessarily assumes, as in the bill alleged (p. 28), that the directors of the corporation—those who had lawful control of its action—for some reason, good or bad, refused to prosecute the claims of the corporation against Durant. The essential object of the action and of each and every part of the bill, therefore, was to direct and control the *internal policy* of the corporation *against the views and wishes of* those lawfully charged with its management.

c. Inasmuch as the corporation had refused to assert the alleged claims against Durant, it might not *wish* to receive any money from him on account of such claims. The suit, therefore, is necessarily one by a Rhode Island Court to *compel* a Pennsylvania corporation to prosecute claims, or to receive money as the fruits of a prosecution thereof by the plaintiff; and such prosecution being in Rhode Island, it was a suit to compel corporate action, in Rhode Island, of a Pennsylvania corporation.

d. Plainly, if the relief which should be given in the suit, should consist of a decree to compel an account and payment by Durant to the company, it might, and probably would, answer no useful purpose of the complainant; for the corporation which did not approve of exacting any money from Durant, and had refused to exact any, would, after this farce of a suit was over, return it to him.

This consequence was plainly seen; and, therefore, the decree actually made provided (p. 78), that the 16,000,000 of dollars which it required Durant to pay, and which, *ex hypothesi*, was the money of the corporation, should not be paid to *it*, but be withheld from it by being paid into the registry of the Court! A Court of Equity in Rhode Island is asked to lay its hands upon $16,000,000 which belongs to a Pennsylvania corporation, and which is needed either to pay the debts and carry on the operations of that corporation, or, if not needed for this purpose, ought to be distributed among its stockholders by way of dividend! The assumption most agreeable to the bill is, that it is money which should be distributed in the form of a *dividend*; and, under this decree—and the nature of the action necessarily requires the result—this Pennsylvania corporation, in order to discharge its own powers and duties to its stockholders by making a dividend, is necessarily obliged to go to the Supreme Court of Rhode Island and ask its permission and the use of its moneys for the purpose; and all this at the instance of a few, perhaps a single stockholder!

e. No claim of the plaintiff is asserted in the bill against Durant directly. These parties were entire strangers, between whom no transactions are alleged. The Court was not asked to make, and it was impossible for it lawfully to make, any decree for the payment of money, or giving other relief to the

plaintiff, unless it should be through the instrumentality of some award to him of his proportionate share as a stockholder of moneys, or property converted into money, which had first been paid to the Credit Mobilier corporation; that is to say, even this particular shareholder could gain no benefit to himself from any decree the Court could make in the suit, *unless the Court could make a decree compelling that corporation to declare and pay a dividend* out of the moneys or proceeds of property which Durant might by the decree be compelled to pay and deliver to the corporation.

11. The crowning difficulty in this attempted exercise by a Rhode Island Court of a jurisdiction over a foreign corporation is now exposed. *The making of a dividend* is a necessary incident of the relief which the Court must have the power to grant, or its intervention becomes wholly ineffectual. But such a dividend, if made at all under authority of the Court, could be made in Rhode Island alone. It could be compelled only by making the directors of the corporation parties defendant to the suit, and having them present within the jurisdiction, so that the Court could compel them, by process of contempt, to hold a corporate meeting and exercise their discretion to make a dividend; *and this corporate meeting must be held in Rhode Island;* for should the directors be allowed to depart to Pennsylvania to

hold the meeting there, the Rhode Island Court would immediately lose its power to enforce a decree.

12. It is indeed conceivable that this plaintiff shareholder might have found all the directors of this corporation on a yachting excursion within the State of Rhode Island, and have procured the arrest of all by a writ of *ne exeat* issued on the ground that they were about *to depart from the State*; but the powey of the Court to compel them to declare a dividend could be effectually exercised only by keeping them within the jurisdiction until the payment of the moneys had been enforced, and they had been compelled to declare the dividend. The question would not be in any manner affected should they have been released upon bonds. The bonds are the mere substitute for the presence of the defendants; and indeed, most imperfect substitutes; for, in case of a refusal to perform the decree, how could damages be proved so as to obtain a substantial recovery upon the bonds? How could damages have been proved in the present case but for the admission which the plaintiff in error obligingly furnished to the defendant? But the directors might be unable, or might refuse to give bonds, in which case the only method by which the Court could work out any beneficial relief to the defendant would involve the necessity of *compelling the holding of a corporate meeting in Rhode Island of a Pennsylvania cor-*

poration and the compulsory exercise at such meeting of the discretion of declaring a dividend.

13. We do not stop here to inquire what acts a foreign corporation might or might not, do in Rhode Island; but we may safely say that there is one thing which it *cannot* do, and, therefore, cannot be compelled to do, and that is, to perform a corporate act at a corporate meeting.

14. If the foregoing views concerning the impotence of a court of equity in Rhode Island to give a shareholder that relief to which the complainant in the Rhode Island suit was entitled in the sort of case shown by his bill, had he made the attempt in the proper forum, that suit itself should afford illustrative proof of them. And so it does. The Court, by its decree (p. 78), exhausted every power it possessed. And what did it accomplish? It decreed that Durant should pay to Rowland Hazard, of Kingston, Rhode Island, and Henry Martin, of Brooklyn, New York, Commissioners appointed by the Court, $16,000,000 and upwards, with the option of paying part by the transfer of certain stocks and bonds to the names of those Commissioners, who were authorized to convert the same into money; and that he should also transfer to the names of the same Commissioners, to be

subject to the decrees and orders in the cause, a large number of shares of certain other designated stock; and that the Commissioners should pay into the registry of the Court all moneys thus received by them to the credit of the cause. The Court having thus seized, or provided for seizing, into its own possession of this vast amount of money and property, belonging, *ex hypothesi*, to this Pennsylvania corporation, confesses its absolute impotence to furnish one iota of relief to the complainant, or to make *any really final decree whatever!* The decree was indeed *final* in the sense that the Court found itself at the end of its rope; but probably no other *final* decree of a Court of equity ever contained such a remarkable confession as the following: "*and the further consideration* " *of this cause*, and particularly as to the " allowances to the complainants for costs " and expenses and services, and *as to the* " *distribution of the funds which may be de-* " *posited in the registry of the Court to the* " *credit of this cause*, and also the consider- " ation of any order or decree which may " be necessary in the premises against the " defendant, Thomas C. Durant, by reason " of any default which may be made by him " touching any portion of this decree, and " also the consideration of any other or fur- " ther decree herein against or concerning the " defendants other than the said Thomas C. " Durant, be, and they hereby are, *directed* " *to stand over*, with leave to any party " in interest, save parties in contempt, or " parties who may appear to be for any cause

"disqualified, to apply at any time for fur-
"ther orders and directions" (Record, pp. 79, 80)! A Court of equity having seized into its possession $16,000,000, or provided for such seizure, makes what it calls a *final* decree, without declaring what shall be done with this vast sum!

15. *Jurisdiction* is the power to declare *justice* and to carry the declaration into *effect*. A Court has jurisdiction when it can accomplish these two ends *by its own arm*, unaided by external assistance. For such help a Court disdains to call. It seizes property, but only because it has the *power* to proceed straightway to dispose of that property as justice requires. It seizes the person, but only because it has the power to compel that person to do what justice requires. When it has not this *power* it has no right to touch either property or person. To do either would be simply trespass *de bonis*, or false imprisonment.

16. It may be argued that the decree provided that any party interested might apply to the Court under the provisions of the decree above quoted, and that therefore the corporation might voluntarily declare in Pennsylvania a just dividend, and then petition for a decree that it might have the property for the purpose of making it. This is perfectly true, and it

shows that some others have the power which the Court ought to have, and that the Court, by *imposing terms* upon which it will release the property or person, has an indirect means of accomplishing what it has no direct power to perform. But this involves the concession that until such an application is made, and such terms assented to, a final decree is impossible, and that the property seized must remain indefinitely in the custody of the Court.

These suggestions precisely indicate the character of this extraordinary suit. To effect a seizure of property through the instrumentality of a seizure of the person, and then to hold the property until its owners should *ransom* it, was its sole capability and purpose. It was not a *judicial proceeding*, but a mere piece of *rapine*.

17. And what kind of justice has been effected through the instrumentality of the judgment in the suit at law now before the Court upon the bond? The plaintiffs are awarded a recovery (p. 145) of $66.470 for their own use without any inquiry whatever whether they are entitled as shareholders to any dividend from the corporation. An apparently ill-advised stipulation (p. 145) may indeed preclude the plaintiff in error from questioning this judgment on this ground.

18. The enumeration of the incongruities and

embarrassments which would attend attempts to exercise such a jurisdiction over the internal management of foreign corporations might be much further extended. But attention should be called to one more. Certainly the power to dissolve a corporation and wind up its affairs must reside exclusively in the State which creates it, but how can such power be effectively or conveniently exercised, if the Courts of another State can entertain such a suit as that under notice? Let it be assumed that the Supreme Court of Rhode Island had succeeded by its control over the person of Durant in compelling the payment into its registry of the sum decreed to be paid to await the further order of that Court; the officers appointed by a Pennsylvania Court to wind up its affairs could not gain possession of this fund either to pay creditors or to distribute among stockholders; and the winding up proceedings in Pennsylvania would be arrested for the same indefinite period (which means, indeed, forever) for which the fund was locked up in Rhode Island.

19. None of these embarrassing consequences attend the exercise of the ordinary jurisdiction which the Courts exercise over a foreign corporation. If a suit is brought for the recovery of money, it may result in a judgment for the payment. But neither justice nor convenience is sacrificed. The question of liability can be perfectly well determined

by the foreign tribunal. It proceeds straightway to its judgment. It requires no aids to its own authority. If property is attached, it is kept only during the pendency of the suit, and is then applied to the satisfaction of the judgment. No embarrassment, inconvenience or delay is occasioned which would not attend a litigation of the like character instituted in the domicil of the corporation.

Third Point.—It seems quite unnecessary to draw a line of distinction between such suits as may, and such as may not, be entertained by the Courts of a State against foreign corporations. Any line which might be drawn, however liberal to the jurisdiction, would exclude such a suit as that brought in the Supreme Court of Rhode Island.

1. That corporations have, in strictness, no existence save in the sovereignty which creates them; that their existence as *artificial persons*, and their capacity to act as such, are nevertheless recognized in other States; but that they cannot perform in other States any strictly corporate acts, are familiar doctrines in the law.

   Acting upon these doctrines the Courts of different nations are in the habit of permitting corporations to sue and be sued in their capacity as persons, on account of their *acts*

as such. Such suits, when against corporations, result in general, in judgments for money or property, which may be executed as ordinary judgments against natural persons are executed. In relation to actions of this character there is no limit to the extent which one State may assume jurisdiction over the *artificial persons* created by another State.

2. But the case is totally different in relation to a judicial proceeding having for its object a review of the internal government and action of a corporate body. In such a case the real purpose is not to compel the performance of acts by the corporation treated simply as a person; but to compel the performance of *corporate* acts which can be performed only in the State where it is created.

3. The question has not, as yet, received complete judicial treatment; but the best authorities are unfavorable to the jurisdiction.

The Cumberland Coal Co. *vs.* The Hoffman Coal Co., 30 Barb., 159, 171.
Howell *vs.* Chic. & N. W. R. R. Co., 51 Barb., 378.

In the first of the above cited cases Mr. Justice ROOSEVELT says (p. 171): "Foreign "corporations may, in some instances, sue "or be sued in our courts, but to warrant the

"proceeding there must be either a necessity "or a fitness suggested by the peculiar cir- "cumstances. The cause of action, or the "subject, or at least some property to be "acted upon, must have arisen or be situated "within our jurisdiction. Without these "qualifications, or one of them, the judg- "ment, should the Court render it, would be "a nullity."

Mr. Justice Ingraham, in the case last cited, expresses similar views. It is proper, however, to say, that other Judges of the N. Y. Supreme Court have not concurred in them (De Bemer *vs.* Drew, 57 Barb., 438).

4. But what is the *nature of the power* sought to be exercised by asserting such a jurisdiction? This ought to settle the question. It is not to enforce a *trust*. The relations between a corporation or its directors and the stockholders are not those of trustee and *cestui que trust*. The power thus exercised is the *visitatorial* power—that which compels a corporate body to perform its functions and obey the law of its organization; and, plainly, it is only in the forum where the corporation is created that such an authority can be exercised.

Fourth Point.—The original and also the amended fifth plea (Records, pp. 7, 142, 148)

set up that the bond was procured by the plaintiff from Durant through duress of illegal imprisonment, and that the defendant was induced by the plaintiff to sign it as a surety on the representation by the plaintiff that the imprisonment was legal. It would seem plain that such a case makes a sufficient defense to the action, and that the allowance of the demurrer to the plea, and the striking out of the amended plea was error.

1. That the plea of duress simply would have been a good defense by the principal Durant, will not be denied; but it is asserted by the defendant in error that it is not available for his surety, Griswold. There are authorities on both sides of this question; but those which hold that duress of the principal debtor is available to the surety seem far more agreeable to the reasons and analogies of the law.

   a. The general rule that there must be a valid principal contract, in order to sustain the contract of suretyship, and that whatever discharges the principal discharges the surety, requires that such a defense should be available to a surety, unless some substantial reason appears to support the apparent incongruity.

   b. But the reasons are all the other way. Are we to compel the surety to pay the

debt without allowing him to go upon his principal for reimbursement? This would be against all reason. But if we allow him to exact reimbursement from the principal, we deprive the latter of his defense.

c. The truth seems to be that some ancient authorities, upon little consideration, catching at the point that *duress* was necessarily *personal*, and could not directly operate upon any one except the immediate subject of it, determined that only he who was actually under duress could plead it; and this decision has been rather blindly followed in subsequent cases. The list of authorities sustaining this doctrine will be found in the brief of the defendant in error. The following will be found to sustain our principal point.

Strong *vs.* Granniss, 26 Barb., 122.
Osborn *vs.* Robbins, 36 N. Y., 365.
Ingersoll *vs.* Roe, 65 Barb., 346.
State *vs.* Brantley, 27 Ala., 44.
Griffith *vs.* Sitgreaves, 90 Pa. St., 161.
Patterson *vs.* Gibson, 10 South Eas. Rep., 9 (Ga.)

d. The question was once presented to Mr. Justice CURTIS. He avoided a decision by placing his judgment on another ground. His observations, however, are very suggestive: "The view which has been taken "renders it unnecessary to consider the

"question whether simple duress at the "common law, operating only on the prin- "cipal can be taken advantage of by the "sureties. The case of Huscombe *vs.* "Standing, Cro. Jac., 187, is certainly in "point, and it has often been assumed to "be good law. I am not prepared to say "it is not so, though it must be admitted "that it may lead to strange consequences, "in a case where the surety pays the bond "and comes back on the principal to in- "demnify him, and thus the latter is "effectually held for a debt, which, ac- "cording to the case in Cro. Jac., does "not appear to have been justly due, and "which he was forced, by duress, to "render himself liable for to the surety, "who, at his request enters into the obli- "gation."

e. The law which avoids contracts procured through duress is founded upon *two* considerations of public policy: *first*, the protection of persons in distress; *second*, the *discountenancing* of such exactions. How can the doctrine under which this plea was stricken out be reconciled with either of these reasons?

f. Even the cases which recognize the doctrine herein questioned hold that where a *near relative*, as a father, son, etc., are the sureties, they may take advantage of the duress of the principal. But what sort of

a ground is this for drawing distinctions in liabilities? Why should a father in such a case be relieved, and not a friend? Ill founded rules are often made to yield to unreasonable exceptions. One error is pretty sure to entail others.

2. The plea shows that the plaintiff in error was ignorant of the illegality of the imprisonment, and the defendants in error represented to him that it was legal, and thus procured his execution of the bond. Can it be that the very party who thus procured a surety upon a bond void for duress, can enforce it against such surety?

Lastly. The judgment below should be reversed with costs and the cause remanded with directions that a new trial be awarded.

JAMES C. CARTER,
Of Counsel for Plaintiff in Error.

SUPREME COURT OF THE UNITED STATES

October Term, 1858

No. 53

JOHN N. A. GRISWOLD, PLAINTIFF IN ERROR,

v.

ROWLAND G. HAZARD, DEFENDANT IN ERROR.

In Error to the Supreme Court of Louisiana.

ELIAS GRISWOLD,

EDWIN STOUGHTON,

for Plaintiff in Error.

Supreme Court of the United States,

OCTOBER TERM, 1890.

No.

JOHN N. A. GRISWOLD, PLAINTIFF IN ERROR,

v.

ROWLAND G. HAZARD ET ALS.

BRIEF FOR DEFENDANTS IN ERROR.

STATEMENT.

This was an action at law brought by the defendants in error against the plaintiff in error in the Supreme Court of Rhode Island, as a surety upon the bond, a copy of which is in the record, pages 2, 3, and subsequently removed by said Griswold to the Circuit Court of the United States for the District of Rhode Island. In that court, jury trial being waived, the case was heard and determined by the Court, and judgment was rendered for the plaintiffs therein for the amount of said bond and interest. The defendant filed several pleas to the plaintiffs' declaration, some of which were demurred to by the plaintiffs, and the demurrers were sustained. The defendant then undertook to file "amended pleas" in place of those which had been adjudged bad, but the Court ordered these amended pleas to be stricken out. The defendants at the trial also took other objections, which are set forth in the bill of exceptions, and which will be considered in their order. The assignment of errors and the bill of exceptions are found in the record, pages 147, 148, 149.

THE DEMURRERS TO DEFENDANT'S PLEAS PROPERLY SUSTAINED.

The first exception and error assigned is that the Circuit Court erred in sustaining the original plaintiffs' demurrers to the **second, third, fourth, fifth** and **seventh pleas** of the defendant. The opinion of Mr. Justice Gray, sustaining the said demurrers, is annexed to this brief.

The **second plea** alleges that the said bond was obtained from the defendant by the

"plaintiffs and by others in collusion with them by fraud, covin and misrepresentation," and that it was executed by the defendant "in confidence of such misrepresentations."

For causes of demurrer to said **second plea**, the plaintiffs point out and offer to the court the following causes, to wit: —

"For that the said defendant in his second plea nowhere sets forth any instances of or facts constituting fraud or covin, nor does he set forth the misrepresentations by which said writing obligatory is alleged to have been obtained, nor does he show or aver that said defendant was misled, deceived by, or relied upon, such pretended misrepresentations. And, also, that said second plea is in other respects uncertain, informal and insufficient."

The defendants in error contend that this plea is not well pleaded.

A general plea of fraud, covin and misrepresentation, without setting out the particular facts constituting the fraud or the alleged misrepresentations, is not sustainable on demurrer.

Slack *v.* McLagan, 15 Ill. 242.
Capuro *v.* Builders' Ins. Co., 39 Cal. 123.
Murphy *v.* Byrd, Hemp. 221.
Cole *v.* Joliet Opera House Co,, 79 Ill. 97.
Service *v.* Heermance, 2 Johns. 96.
Hale *v.* W. Va. Oil, etc., Co., 11 W. Va. 229, 235.

Jones *v.* Albee, 70 Ill. 35.
Sterling *v.* Mercantile Ins. Co., 32 Pa. St. 75.
Darnell *v.* Rowland, 30 Ind. 342.

The party against whom fraud is alleged has the right to be apprised of the facts constituting the alleged fraud, with such certainty that he may have an opportunity of joining issue thereon.

Wallingford *v.* Mutual Society, 5 App. Cas. 685, 697, 701, 709.
J. Anson *v.* Stuart, 1 Term R. 748.
Hynson *v.* Dunn, 5 Ark. 595.
Hopkins *v.* Woodward, 75 Ill. 65.
Abraham *v.* Gray, 14 Ark. 301.

A general allegation of fraud, without specifying the facts, is a statement of an inference of law from facts which are not disclosed. The rules of common-law pleading require that only facts, and not conclusions of law, should be stated.

Supervisors of Kew Co. *v.* Decker, 30 Wis. 634.
Giles *v.* Williams, 3 Ala. 316.

The facts constituting the alleged fraud should be set forth, in order that it may appear whether the fraud was in the execution of the instrument, or went to the substance of the consideration; or whether it was in some matter collateral to the consideration, or amounted to a want of consideration, — so that it may be determined whether or not the alleged fraud is cognizable in a court of law.

Phillips *v.* Potter, 7 R. I. 289, 300.

A general plea of fraud is bad on demurrer, even in those States where fraud in the consideration is a defence in an action at law.

Giles *v.* Williams, 3 Ala. 316.

A plea setting up fraud, covin and misrepresentation as a defence, should allege that the party pleading relied upon the fraudulent statements and misrepresentations alleged to have been made, and was deceived thereby. These are essential elements of every fraud, and should be averred.

The **third plea** alleges,—

"that the said writing obligatory was obtained from the defendant by the plaintiffs and others in collusion with them by fraud, covin and misrepresentation, that is to say, that heretofore the said Thomas C. Durant was arrested on a writ of *ne exeat*, issued from the Supreme Court of the State of Rhode Island, in a suit inequity, wherein one Isaac P. Hazard was complainant, and the said Durant and others respondents, which suit is the suit in equity mentioned in the condition to said supposed writing obligatory; and that the plaintiffs with other persons colluding with them and assisting them as their agents and attorneys, procured the signature of the defendant to said supposed writing obligatory, representing to him that said writing was a bail bond, and a bond conditioned that said Durant should abide the orders and decrees of the said Supreme Court in said cause; and that the defendant signed and sealed said writing, relying upon and believing such representations made by the plaintiffs and such other persons colluding with them and assisting them as their agents and attorneys, all which representations were untrue and false, and by means of said misrepresentations, the defendant, in confidence thereof, signed and sealed said writing."

For causes of demurrer to the said **third plea**, the plaintiffs (defendants in error) point out and offer to the court the following causes, to wit: —

"(1.) For that the said defendant in his said third plea nowhere alleges that the said defendant is an illiterate person, nor that he is blind, and that upon his request to have the said writing obligatory read to him, it was falsely read, nor that he did not himself read the said writing obligatory, nor that he was ignorant of the contents thereof, nor that his signature to said writing obligatory was obtained by the fraudulent substitution of the said writing obligatory for another instrument which it was his intention to execute as surety, nor any other facts which show that he did not in fact know, and was not bound in law to know, the legal tenor and effect of such writing, or which would entitle him the said defendant to rely upon the alleged representations of the plaintiffs and their agents and attorneys.

"(2.) And also that the said defendant in his said third plea nowhere alleges that the alleged representations were made by the said plaintiffs, and their agents and attorneys, with a knowedge of their falsity, or with intent to deceive. And also that the said third plea is in other respects uncertain, informal and insufficient."

1. This plea sets forth no valid defence.

(*a.*) A party executing an instrument is bound in law to know the contents thereof, unless he was prevented by some fraudulent device, such as the fraudulent substitution of one instrument for another. If there was a fraud of this nature, it should be specifically averred. A party who is not blind or illiterate, and executes an instrument without hearing it read, or a party who can read the instrument and does not, cannot set up misrepresentations as to the contents of the instrument as a defence to an action on the instrument, notwithstanding he relied upon false representations made by the obligee and others as to the nature of the instrument.

2 Kent's Com. 484.
Shep. Touch. 56.
Anon., Skinner, 159.
Thoroughgood's case, 2 Coke, 9.
Hawkins *v.* Hawkins, 50 Cal. 558.
Rogers *v.* Place, 29 Ind. 577.
Seeright *v.* Fletcher, 6 Blackf. 380.
Ins. Co. *v.* Hodgkins, 66 Me. 109.

"The common law affords to every one reasonable protection against fraud in dealing; but it does not go the romantic length of giving indemnity against the consequences of indolence and folly, or a careless indifference to the ordinary and accessible means of information."

2 Kent's Com. 485.

The full report of Anon., Skinner, 159, is as follows: —

"One that could read, made an agreement for a lease for twenty-one years; the lessor himself drew the lease but for one year, and read it for twenty-one years; and after the expiration of a year, ejected the lessee, and he brought a bill in chancery to be relieved, upon all this matter, which was in proof; but 'twas dismissed with costs, for it was within the statute of frauds and perjuries, etc., and, being able to read, it was his own folly; otherwise, if he had been unlettered."

Not only is a party executing an instrument bound in law to know the contents of that instrument, but he is also bound in law to know the legal effect of the in-trument. The alleged fraudulent representations were representations as to the legal effect of an instrument, and therefore matters of law. It is well settled that the law will not relieve a party who relies upon such representations, and is deceived thereby.

Upton, Assignee, *v.* Tribilcoch, 91 U. S. 45.
Miller *v.* Elliott, 1 Ind. 484.
Starr *v.* Bennett, 5 Hill, 303.
Clem *v.* N. & D. R. R. Co., 9 Ind. 488.
Blackburn's Case, 8 DeG. M. & G. 177.
Rashdall *v.* Ford, L. R. 2 Eq. 750.

The plea is informally pleaded.

A plea alleging fraudulent representations as a ground of defence should aver that the representations were made with a knowledge of their falsity, and with an intent to deceive. Without these there was no fraud, even though the representations were false, but at most a case of mistake, against which a court of law cannot relieve.

McDonald *v.* Trafton, 15 Me. 225.
Zehner *v.* Kepler, 16 Ind. 230.
Moss *v.* Riddle, 5 Cranch, 351, 357.

"Fraud consists in intention, and that intention is a fact which ought to have been averred, for it is the gist of the

plea, and would have been been traversable," per Marshall, C. J., in Moss *v.* Riddle, 5 Cranch, 357.

The **fourth plea** alleges, —

"that on the twenty-second day of August, A. D. 1868, one Isaac P. Hazard filed a bill of complaint in equity, in the Supreme Court of the State of Rhode Island, in the county of Newport, in behalf of himself and all other stockholders who might join him of a corporation known as the Credit Mobilier of America, against Thomas C. Durant and others, which bill is the original bill in the suit in equity mentioned in the condition of said supposed writing obligatory, a duly authenticated copy of which bill, and of the record of which suit, is here produced and made a part of this plea. And the defendant says that it appears from an inspection of said bill and of said record that said Supreme Court had no jurisdiction thereof, nor of the matters therein set forth and charged, nor of the suit in equity begun by and founded on said bill; and that there is nothing alleged nor charged in said bill wherefrom a court of equity and said Supreme Court can or could make any valid order or decree whatever, except an order dismissing said bill. And the defendant further saith, that, notwithstanding its lack of jurisdiction over said bill, said matters and said suit, the said Supreme Court, at the request and on motion of the plaintiffs in this action, proceeded to make certain pretended orders and decrees in said suit, which the said Durant was not and is not by law required to abide and perform; and that no orders, nor decrees have been made in the said suit in the said condition of said writing mentioned, which the said Durant could or can be lawfully called upon to abide and perform.

For causes of demurrer to the said **fourth plea**, the plaintiffs (defendants in error) point out and offer to the court the following causes, to wit: —

"For that the defendant in his said fourth plea nowhere alleges that the said Supreme Court of the State of Rhode Island had not jurisdiction of said suit in said fourth plea, recited by reason of the said Thomas C. Durant appearing therein as defendant, or by reason of his submitting to the judgment of said Supreme Court in said suit; nor does said plea show that said Supreme Court of Rhode Island had not jurisdiction of said suit and of said Durant, nor that its orders and decrees therein were not valid and binding upon said Durant. And also that the said fourth plea is in other respects uncertain, informal and insufficient."

The demurrer to this plea should be sustained.

1. Because the plea is not pleaded with certainty. A plea in a collateral suit which sets up a want of jurisdiction of the court in the original action, should either negative every fact which might possibly confer jurisdiction, or should set forth specifically the facts which exclude the court from jurisdiction. A general allegation of want of jurisdiction, as shown by the record of a suit of almost interminable length, covering a period of many years of litigation, and assuming a variety of complications, without stating whether that want of jurisdiction is of the subject matter of the suit, or of the parties, or wherein it consists, does not apprise the plaintiffs with certainty, as it should, of the grounds of the want of jurisdiction relied upon.

2. A copy of the bill and of the record in the original suit, Hazard *v.* Durant, is made part of the plea. Upon inspection of this record thus made a part of this plea, it is clear, —

First. That the Supreme Court of Rhode Island had jurisdiction as a court of equity over the subject matter of the bill.

Second. That said court had jurisdiction over Durant personally in that case. Personal service was made upon him within the jurisdiction of the court, both of the subpœna and the writ of *ne exeat*, and he also appeared in the case.

These facts, which the plea makes a part of this record, conclusively show that the Supreme Court of Rhode Island had jurisdiction, and the averment in the plea to the contrary is a mere averment of law, or of a legal conclusion (which the demurrer does not admit), and is obviously erroneous.

As stated by Mr. Justice Gray in his opinion (Appendix, page 31) : —

"The only ground appearing on the record or suggested in argument for impugning the jurisdiction of the court is, that the bill

which was filed by Hazard, in behalf of himself and other stockholders in the Credit Mobilier of America, to charge Durant with certain funds of that corporation, did not contain sufficient allegations that the corporation had been requested and had refused to bring suit against Durant, to support a bill in behalf of the stockholders, within the rule established by the Supreme Court of the United States in Hawes *v.* Oakland, 104 U. S. 450. But the Supreme Court of Rhode Island is a court of general equity jurisdiction, and as such entertained that suit. Pub. Stats. R. I., Chap. 192, Sect. 8; Hazard *v.* Durant, 11 R. I. 195, and 14 R. I. The defect suggested is not want of jurisdiction over the whole subject, but incompleteness in the statement of the facts required to justify the stockholders in invoking the exercise of that jurisdiction. Such a defect or informality cannot be availed of by either of the obligors to defeat an action upon the bond; and whether want of jurisdiction of the former suit on any ground could be set up in defence of this action, need not be considered. Jesup *v.* Hill, 7 Paige, 95; Griswold, petitioner, 13 R. I. 125."

The fatal fallacy in the objection of the plaintiff in error to the jurisdiction of the Rhode Island court, is in assuming that that court was bound by a rule of equity pleading prescribed for itself by this court. The Supreme Court of Rhode Island being a court of full equity jurisdiction, it was for it, and it alone, to determine whether the averments in a bill were sufficient or not to bring before it any particular subject matter for its determination. That identical question it did consider and pass upon in Hazard *v.* Durant, 11 R. I. 195; and that decision was and is conclusive between these parties, and is not reviewable by this court in this case.

See also,

Harvey *v.* Taylor, 2 Wall. 328.
Cooper *v.* Reynolds, 10 Wall. 308.
Cornett *v.* Williams, 20 Wall. 226.

Third. Again, the defendant was estopped from pleading want of jurisdiction in the original suit as a defence to the bond.

Where a person is in custody on a writ of *ne exeat*, and, in order to get released, before he has an opportunity to move

to discharge the *ne exeat* upon its merits, gives a bond to abide and perform the orders and decrees in the cause in which the *ne exeat* writ issues, and does not reserve the right to question the jurisdiction of the court in the cause and in issuing the writ, he is afterwards, in an action on the bond, precluded from setting up such want of jurisdiction as a defence to the action.

Jesup *v.* Hill, 7 Paige's Ch. 95.
Hazard *v.* Durant, 9 R. I. 602, 606.

It does not appear by the plea that the principal, Durant, in executing the bond, reserved the right to question the jurisdiction of the court in the suit in which the writ issued. If there was such a reservation, and the defendant relies thereon, he should have set it forth in his plea.

In Hazard *v.* Durant, 9 R. I. 606, Potter, J., said: —

"Ordinarily, when a writ of *ne exeat* is issued, the sheriff is to take a bond from the party, that he will not go abroad without leave of court. Upon motion of the defendant, at any time before or after answer, the court may discharge it absolutely, or may require him to give security to abide by and perform the decree of the court. In the present case, an order of court was made Aug. 24, discharging the *ne exeat*. This was done by consent of parties, Mr. Durant executing a bond of that date to the plaintiffs 'to abide and perform the orders and decrees of the Supreme Court of the State of Rhode Island' in the present suits. This is equivalent to an agreement to abide by the decision of the State court. Dr. Durant obtained his discharge by making it. It can make no difference whether he obtained it on motion to the court, or by order made on agreement of parties. Dr. Durant is therefore estopped, by his own deliberate agreement or act, from asserting the jurisdiction of any other court over the subject matter."

Fourth. The surety as well as the principal is estopped by the bond from pleading a want of jurisdiction of the court in the original suit. Where the bond itself, in an action thereon, estops the principal from pleading in defence a fact which was in existence at the time of the execution of the

bond, it will estop the surety also from setting up such fact in defence. (Cases *supra*, page 10.)

People *v.* Norton, 5 Selden, 176.
Bassett *v.* Crafts, 129 Mass. 513.

The **fifth plea** alleges.—

"that Thomas C. Durant, who is the principal obligor mentioned in said supposed writing obligatory, at the time of the making of the said writing, to wit, on the twenty-fourth day of August, A. D. 1868, at Newport, in the State of Rhode Island, to wit, at Providence, in the county of Providence and State aforesaid, was unlawfully imprisoned by the said plaintiffs and others in collusion with them, and then and there detained in prison, until, by the force and duress of imprisonment of him the said Thomas C. Durant, he, with the said defendant as surety, made the said writing, signed and sealed and delivered the same to the said plaintiffs as their deed. Wherefore he, the said defendant, saith that the said writing is void in law."

For causes of demurrer to said **fifth plea**, the plaintiffs (defendants in error) point out and offer to the court the following causes, to wit: —

"For that the said defendant in his said fifth plea nowhere alleges that the said writing obligatory was executed by him the said defendant under force and duress of imprisonment of him the said defendant, nor that he did not voluntarily execute the said writing obligatory as surety, with knowledge that the same was executed by the said Thomas C. Durant as principal, under force and duress of imprisonment, as alleged in said fifth plea. And also that the said fifth plea is in other respects uncertain, informal and insufficient."

This plea sets forth no valid defence.

1. The duress which will avoid a bond must be to the party seeking to take advantage of it, and not to a stranger. The only possible exception to this rule is in the case of parties nearly related, as parent and child, etc., or bonds exacted *colore officii*. The privilege of pleading duress is a personal one, and a plea of duress of the principal is not a good plea

for a surety. These principles are well settled by the cases, both ancient and modern.

1 Rolle's Abr. 687.
Sliep. Touch. 62.
Bacon's Abr. 687.
Huscombe *v.* Standing, Cro. Jac. 187.
Wayne *v.* Sands, Freeman, 351.
Mantell *v.* Gibbs, Brownl. & Gold. 64.
Plummer *v.* The People, 16 Ill. 358.
Robinson *v.* Gould, 11 Cush. 55.
Fay *v.* Oatley, 6 Wis. 42.
McClintick *v.* Cummins, 3 McLean, 158.
Thompson *v.* Lockwood, 15 Johns. 256.
Fisher *v.* Shattuck, 17 Pickering, 252.
Bowman *v.* Hillier, 130 Mass. 153.
Harris *v.* Carmody, 131 Mass. 51.
Griffith *v.* Sitgreaves, 90 Penn. St. 161.

As pointed out by Mr. Justice Gray, "the case of Hawes *v.* Marchant, 1 Curtis, 136, was not a case of duress at common law, but of oppression by the illegal exercise of official power in excess of statute authority, and was decided upon that ground."

2. It is true *a fortiori* that a surety cannot plead duress of the principal as a defence to an obligation, when, at the time of executing the instrument, he was fully informed as to the fact constituting the alleged duress of the principal.

Griffith *v.* Sitgreaves, 90 Penn. St. 161.

A surety, executing an instrument with knowledge that the principal had executed it under duress, knows that he may have no remedy against his principal. If the defendant executed the bond as surety without knowledge of the alleged duress of his principal, he should have averred

this in his plea, in order to avail himself of it as a defence.

3. Where the bond is joint and several, as in this case, the surety is bound, even though the obligation is voidable as to the principal.

1 Parsons on Notes and Bills, 244.
Kimball *v.* Newell, 7 Hill, 116.

A bond executed under duress is voidable, and not void as to the principal.

Lewis *v.* Bannister, 16 Gray, 500.
1 Chitty on Cont. 273.

The following cases, frequently cited to support the principle that duress of the principal is a good defence for a surety in an action on a bond or note, are not authorities to the extent frequently claimed for them.

In Thompson *v.* Lockwood, 15 Johns. 256, Strong *v.* Grannis, 26 Barb. 22, and Fisher *v.* Shattuck, 17 Pick. 252, the bonds sued upon were absolutely void under statutory provisions; and the first case recognizes the principle that, at common law, duress of the principal is not a good plea for a surety.

Osborne *v.* Rollins, 36 N. Y. 365, and Ingersoll *v.* Roe, 65 Barb. 346, come within the exception already stated. In Evans *v.* Huey, 11 Bay, 13, the surety and principal signed under similar circumstances, and the case is decided without stating reasons or citing authorities.

State *v.* Brantley, 27 Ala. 44, was decided on the authority of cases which do not support the conclusion reached.

In Griffith *v.* Sitgreaves, 90 Penn. St. 161, duress of the principal was allowed as a good defence for the surety under a plea of *non assumpsit;* but Paxton, J., said, in deciding that case, "Duress as a plea is bad, if the duress set up was upon some person other than the party pleading it."

The **seventh plea** alleges, —

"that the suit in equity of Isaac P. Hazard and others against Thomas C. Durant and others, mentioned in the condition of the said supposed writing obligatory, is a certain suit in equity commenced by the said Isaac P. Hazard, who filed his bill of complaint therein in the Supreme Court of Rhode Island on the twenty-second day of August, 1868, in the county of Newport in said State, in behalf of himself and all other stockholders of a corporation known as the Credit Mobilier of America who might thereafter join him against the said Thomas C. Durant and others, which bill is the original bill in the suit in equity mentioned in the conditions of said supposed writing obligatory, a duly authenticated copy of which suit is here produced and made a part of this plea; and the defendant says that after the commencement of the said suit in equity, the said Rowland Hazard and others who are the persons named as obligees in the said writing became parties complainant therein, and thereafter, to wit, on the seventeenth day of November, A. D. 1875, the said Rowland G. Hazard filed his bill of complaint in equity in the Court of Common Pleas (No. 2) in the city of Philadelphia, in the State of Pennsylvania, against the said Credit Mobilier of America and others, which said suit was afterwards removed to the Circuit Court of the United States for the eastern district of Pennsylvania, the same being the *forum* of the domicile of the said corporation, in which suit such proceedings were had that one Oliver Ames was appointed by the said court receiver of all the goods, chattels, rights and effects of the said corporation; and that thereafter the said receiver obtained from the said court authority to deliver to the said Thomas C. Durant a deed of release of all sums of money then due and owing, or thereafter to become due, together with all manner of actions, causes of action, suits, bills, bonds, writings obligatory, debts, etc., whatsoever, both at law and in equity, or otherwise howsoever, which it, the said Credit Mobilier, then had, or which it should or might at any time or times therafter have, claim, allege or demand against the said Thomas C. Durant, for or by reason or means of any matter, cause or thing whatsoever from the beginning of the world to the date of the said deed or writing of release, as by the said deed or writing of release, reference being thereunto had, will fully appear, a duly authenticated bill of complaint and of the record of which suit is here produced and made a part of this plea; and the said defendant says that afterwards, to wit, on the day of , A. D. 1881, the said Oliver Ames, acting by virtue of the said authority and in consideration of the delivery to him by the said Durant of a deed conveying the title to the lands mentioned in the said order authorizing the said release, did deliver to the said Thomas C. Durant a deed of

release of all sums of money then due and owing or thereafter to become due, together with all manner of actions, writings obligatory, etc., whatsoever, which the said Credit Mobilier of America had against him, the said Thomas C. Durant, for or by reason or means of any matter, cause or thing whatsoever, from the beginning of the world to the date of the said deed or writing of release, which is here produced and shown to the court, fully appears."

For causes of demurrer to the said **seventh plea**, the plaintiffs (defendants in error) point out and offer to the court the following causes, to wit: —

"That the said Circuit Court of the United States for the eastern district of Pennsylvania could not, by reason of want of jurisdiction, authorize a receiver appointed by and acting under the authority of said court; and that said receiver had no power to give the said Durant a valid release from his written obligation to abide and perform the orders and decrees of the Supreme Court of the State of Rhode Island, nor in any other way interfere with the proceedings of said Supreme Court. And also that the said seventh plea is, in other respects, uncertain, informal and insufficient."

This plea, setting up a release from the receiver of the Credit Mobilier to Durant, as an answer to the decree of the Supreme Court of Rhode Island against Durant for $16,071,659.97 (Record, page 78), is fatally defective, for several reasons.

First. This release was given at least a year before the decree of the Supreme Court of Rhode Island, the non-performance of which is the breach alleged in the declaration. The said release, if it had any legal effect, could only be availed of by pleading it in that court before the decree.

Biddle v. *Wilkins*, 1 Pet. 692.

"The general rule is, that there can be no averment in pleading against the validity of a record, though there may be against its operation. And it is upon this ground that no matter of defence can be pleaded in such case, which existed anterior to the judgment. Chitty Plead. 481."

Therefore, no matter of defence can be pleaded which existed anterior to the recovery of the judgment.

Second. This pretended release was utterly void, and of no effect as against the original plaintiffs in that suit.

The Circuit Court of the United States for the eastern district of Pennsylvania had no jurisdiction which would enable it to authorize a valid release from a written obligation to abide and perform the orders and decrees in a suit pending in the Supreme Court of Rhode Island.

(*a.*) The suit in which Oliver Ames was appointed receiver of the Credit Mobilier of America, by the Circuit Court of the United States for the eastern district of Pennsylvania, was not commenced until after the Supreme Court of Rhode Island had taken jurisdiction of the suit mentioned in the condition of the bond, *and Durant was not a party to that suit.*

The Supreme Court of Rhode Island, once having taken jurisdiction of the person of the defendant therein, could not be ousted of its jurisdiction by the act of the United States Circuit Court. The release pleaded can be held a valid release only on the ground that when the jurisdiction of a State court has already attached, a United States Circuit Court can defeat that jurisdiction. It is, however, well settled that, where the jurisdiction of a court and the right of a plaintiff to prosecute his suit therein have once attached, that right cannot be arrested or taken away by proceedings in another court.

Peck *v.* Jenness, 7 How. 612.
Hutchinson *v.* Green, 2 McCrary, 471.

With equal reason might the United States Circuit Court have essayed to release Durant from arrest under the *ne exeat* writ, by releasing him from liability in the suit in which the *ne exeat* writ issued, or to release him from an obligation

entered into by him, not to depart from the jurisdiction of the Supreme Court of Rhode Island, — either of which acts would be clearly beyond its jurisdiction, and an unwarrantable interference with the rights of a State court.

(*b.*) The suit mentioned in the condition of the bond was a suit in equity by part of the stockholders of a corporation against an officer of that corporation, for the fraudulent conversion of corporate funds. It was brought after the corporation had been requested, and had refused, to bring suit against the defrauding officer. The Credit Mobilier was a party defendant, appeared, allowed the bill to be taken *pro confesso* and thus admitted the truth of these allegations. To hold this a valid release, would be to hold that a corporation or a majority of its stockholders may, by proceedings in another forum and through the agency of a receiver, condone or release the fraud of its officers, and thus defeat the complaining minority of the stockholders of their right of redress. An officer of a corporation, in collusion with a majority of the stockholders, could thus fraudulently appropriate the corporate funds with impunity, and a minority of the stockholders would be without remedy.

Hazard *v.* Durant, 11 R. I. 196, 206, 207.
Atwood *v.* Merryweather, L. R. 5 Eq. 464.

2. The receiver had no power to grant a valid release.

A receiver has no right to appear in a case pending at the time of his appointment, or to interfere with the proceedings in such case, without an order of court allowing him to do so.

Tracy *v.* First Nat. Bank, 37 N. Y. 523.

The record does not show that such an order was ever granted.

This last principle would be true *a fortiori* where the receiver derives his authority from a foreign jurisdiction.

A receiver has no authority and will not be recognized except in the forum which appointed him.

Hazard *v.* Durant, 19 Fed. Rep. 471.
Booth *v.* Clark, 17 How. 322.

3. The release pleaded is a release from the receiver of the Credit Mobilier of America to Durant. But the Credit Mobilier and Durant are *joint* defendants in the original suit of Hazard *v.* Durant *et als.* They had filed an appearance but made no answer, thus virtually confessing the allegations of the bill. Such a release from one defendant to another cannot operate to the prejudice of the plaintiff, nor be pleadable to a decree obtained by him in the original suit.

11 R. I. Sup. 204.

4. Moreover, the copy of the record of the case in Pennsylvania, which the plaintiff has made a part of his **seventh plea**, shows conclusively that the order of that court allowing the receiver to give such release was obtained by means of a gross fraud upon the court, and that the court, immediately upon the true facts being brought to their notice, rescinded said order. It appears that said order was obtained from the court without any notice to R. G. Hazard, the plaintiff in that suit, and also upon *ex parte* affidavits which suppressed entirely any information whatever as to the existence of the Rhode Island suit, or of the claim made therein against said Durant in behalf of the stockholders of the said Credit Mobilier Company, or that the master appointed therein had made a report wherein he found that the said Durant was indebted to the said Credit Mobilier Company in a very large sum, amounting in the aggregate to more than five millions of dollars. (See affidavit of R. G. Hazard, Record, page 130.)

Defendant's Second Exception.

The second exception and assignment of errors is that the Circuit Court erred in striking from the record the amended **third, fourth, fifth** and **seventh pleas** which the plaintiff in error undertook to file after the demurrers to said original pleas had been sustained.

No exception can be taken to this action of the court.

First. Because the allowance or disallowance of any amendments, including the filing of amended pleas, so called, is a matter entirely within the discretion of the court, and is therefore not subject to exception. It is well settled that all questions of amendments (unless under very extraordinary circumstances) are not matters of exception, or reviewable in this court.

U. S. *v.* Buford, 3 Peters, 12, 31, 32.
Ex parte Bradstreet, 7 Peters, 634, 647.
Chirac *v.* Reinicker, 11 Wh. 280, 302.

Second. The action of the Circuit Court, in ordering these amended pleas to be stricken out, was entirely correct and justifiable, because those amended pleas were in substance the same as those which had been disallowed, or so far as they introduced any new matter, such new matter was clearly immaterial, and stated no good defence at law.

The **third amended plea** is in substance the same as the original **third plea**, except that it sets up that "without his knowledge, and without giving any information thereof," the parties entered into the following agreement: —

"In the above-entitled case it is agreed that the said Thomas C. Durant shall file a bond, with surety, in the penalty marked in the writ of *ne exeat* to abide and perform the orders and decrees of the court in said case, and that

thereupon the writ of *ne exeat* aforesaid shall be discharged, and the court may enter decree accordingly.

"FRANCIS B. PECKHAM,
Complainant's Attorney.

CHAS. C. ZAN LANDT,
Solicitor with T. C. DURANT."

Also, that without his knowledge the following order was subsequently entered in that case: —

"Thomas C. Durant, one of the defendants in this suit, having executed and filed a bond, with sureties, to abide and perform the orders and decrees of the court made in this suit, it is now by consent ordered that the write of *ne exeat* heretofore issued be discharged.

"E. R. POTTER,
Ass. Just. Sup. Court."

"August 24th, 1868.

In no possible view could the suppression or withholding of the fact from Griswold, that the counsel in the suit signed a necessary agreement for the discharge of the writ of *ne exeat* upon the filing of the bond, have injuriously affected or influenced said Griswold. So far as the plea shows, this agreement may have been entered into after the bond was signed. Still less could the order of the court, made subsequently to the filing of the bond to discharge the writ (such discharge being the very object for giving the bond), have injuriously affected said Griswold. The Circuit Court properly treated these allegations as frivolous, and struck out the plea.

Amended Fourth Plea. This is a mere repetition of the original **fourth plea**, stating, only with a little more detail, the matters therein set up. It clearly appears, from the opinion of Mr. Justice Gray, that the matters set up in this amended **fourth plea** were relied upon by Griswold to sup-

port said original plea, and were considered and passed upon in that opinion.

The only matter attempted to be set up in this plea was that the Rhode Island Supreme Court did not have jurisdiction of the suit in which the bond was given. As shown in said opinion, there were two conclusive answers to this plea, as well as to the original plea, viz: (1) the objection of want of jurisdiction was not open to Griswold, and (2) the plea presented no valid objection to the jurisdiction of the court.

Amended Fifth Plea. This plea adds nothing, in legal effect, to the original fifth plea. It states that the said plaintiffs

"informed him [Griswold] that the said Durant was in lawful arrest . . . That during the whole time between the close of daylight of said Saturday and the beginning of daylight of said Monday the clerk's office of the Supreme Court of the county of Newport, where the said bill in equity, brought by the said Hazard, was filed, was closed, whereby the defendant was unable to see the said bill, and was compelled to rely, and did rely, and believe the statements of the plaintiffs, the complainants in said bill, that the said Durant was lawfully in arrest, while in fact the contrary of these statements was true, and the said Durant was not in lawful arrest, but was in illegal duress, and the defendant, when he signed and sealed said writing, was, by the act of the plaintiffs, ignorant of the facts which made said supposed writing obligatory invalid."

The affirmation (as averred) by the plaintiffs, that Durant was in lawful arrest, could have had no more force or significance than the fact of the arrest itself, which was in itself the most emphatic assertion by the plaintiffs of their opinion as to the legality of the arrest; at the most, it was a mere representation as to a matter of law — a representation upon which Griswold had no right to rely. (See cases to this point, *ante*, pages 3, 4 and also cited in brief in case No. 340.)

This plea is also fatally defective in failing to set forth any facts which rendered said arrest unlawful, or which "made

said supposed writing obligatory invalid," or which made the writ of *ne exeat*, referred to in said plea, invalid or void as against Durant, and also in failing to aver that the defendant was ignorant of such facts and circumstances. Again: ignorance by Griswold of any facts which might render Durant's arrest voidable, Griswold being cognizant of the arrest, would not be any defence to Griswold against the bond which he voluntarily executed. (Cases, *supra.*)

Amended Seventh Plea. (1.) This was pleaded as "*an equitable plea*," and was, therefore, properly stricken out. In the courts of the United States equitable pleas are not permissible in actions at law. The distinction between law and equity is rigidly enforced.

6 Wall. 134.
100 U. S. 100.
99 U. S. 378.

(2.) So far as this plea varies from the original **seventh plea**, it is in this: that this plea sets up that the said Durant endeavored to plead the release referred to

"in the said suit before the Supreme Court of Rhode Island, but was not permitted so to do because he was alleged to be in contempt of said Supreme Court for violating one of the orders of said court, which thereupon proceeded, notwithstanding the said release, to enter up the supposed decree against the said Durant, which is referred to in the plaintiffs' declaration."

That is: this amended plea sets up that the Supreme Court of Rhode Island, before passing their final decree, had this release brought to their notice, and refused to give it any effect as a defence in that case, and rendered a decree against Durant, notwithstanding the said release. . . . It is now, then, perfectly clear, if never before, — the Supreme Court of Rhode Island, with full jurisdiction over the subject matter, having adjudicated that said release was no de-

fence against the complainants' claim in that case, — that this same release cannot be set up as any defence against that very decree, and, therefore, the Circuit Court committed no error in refusing to give any effect to said amended plea, and in ordering it to be stricken out. (Cases, *supra*, pages 15, 16.)

Defendant's Third Exception.

This exception states that, at the trial, the plaintiffs introduced the original bond, set forth in their declaration a duly certified copy of the decree of the Supreme Court of Rhode Island, in the case of Hazard *et al. v.* Thomas C. Durant, being the decree referred to in said declaration, and also the two stipulations marked "A" and "B," respectively, copies of which are made part of his bill of exceptions. (Said stipulations are in the record, pages 144, 145.)

Tne defendant then put in the record the case of Hazard *et al. v.* Thomas C. Durant *et al.* in evidence, "a copy of which record is made a part of this bill of exceptions, as said record is set out in the defendant's fourth plea, with the exhibit thereto."

The defendant moved for judgment in his favor on his **eighth, ninth** and **tenth pleas**, respectively, which motion was was overruled.

Eighth Plea. This plea simply sets up

"that the pretended decree of the Supreme Court in the State of Rhode Island, in the plaintiff's declaration mentioned, is not a decree of said court in the suit in equity of said Hazard *et al. v.* Thomas C. Durant *et al.*, mentioned in the condition of the said writing obligatory."

This is disposed of by the statement in the exception itself, that the plaintiffs introduced "a duly certified decree of the Supreme Court of Rhode Island, in the case of Hazard *et al. v.* Thomas C. Durant et al., *being the decree referred*

to in said declaration," and the declaration avers that the decree referred to in it was the decree which, by the bond aforesaid, the defendant was bound to pay.

Stipulation "B," Record, p. 145, also provides

"that the plaintiffs are able to prove under the decree of the Supreme Court of Rhode Island, of Dec. 2, 1882, in the equity suit Hayard *et al. v.* Durant *et al.* (being the decree referred to in the said declaration) an amount of damage in excess of the penal sum of the bond declared on in this suit.

It is thus clear that the decree referred to in this declaration was the decree referred to in the bond, and that due proof of said decree was made, and also of an amount of damage in excess of the penal sum of said bond, and consequently that the defendant was not entitled to judgment on this plea.

Ninth Plea. This plea simply set up that the Supreme Court of Rhode Island had not made any orders or decrees in the said suit. All that has been said in reference to the eighth plea applies equally to this, and disposes of this exception.

Tenth Plea. The tenth plea sets up that the said Durant

"did abide and perform the orders of the Supreme Court of the State of Rhode Island in the said suit in equity mentioned in the condition of said writing."

This plea was disposed of by paragraphs 3, 4 and 5 in stipulation "A," Record, page 144, viz.: —

"III. That said Thomas C. Durant has not paid the sum required in the decree, nor any part thereof.

"IV. That said Durant has not been in Rhode Island since Dec. 2, 1882. (The date of said decree.)

"V. That said defendant has not produced, or offered to produce, the body of said Durant since Dec. 2, 1882, to said Supreme Court or otherwise."

Defendant's Fourth Exception.

This exception is to the admissibility of the bond in suit, upon the alleged ground that it was not stamped as required by law. (Stats. 1886, Chap. 184, page 143.) This exception is not well taken, for two reasons: *First*. No stamp was required by law. By the United States Revenue Act then in force, bonds which were "required in any legal proceedings" were not required to be stamped.

U. S. Stats. 1864, Chap. 173, Schedule, B. page 299.
McGovern *v.* Hoesbeck, 53 Penn. 176.
Bowers *v.* Beck, 2 Nev. 189.

This bond clearly comes within the exception.

The writ of *ne exeat* "required" Durant to give a bond. The bond which was given was one in the form ordinarily required by courts of equity before discharging the writ, and it was none the less a bond required in legal proceedings, because the parties agreed upon the *form* of it, instead of insisting upon an order of the court.

Secondly. To avoid, however, any possible question, before said bond was offered in evidence, the plaintiffs (defendants in error) complied strictly with the provisions of the United States Revised Statutes, Section 3422, by paying to the collector of revenue for the proper district the price of the proper stamp required by law, and also the amount of the penalty and all other sums required by law, whereupon the collector affixed the proper stamp to said bond, and noted upon the margin thereof the date of his so doing, and the fact that such penalty had been paid, and all this appeared upon the said bond when it was offered and admitted in evidence. . . . (A true copy of the bond and of the stamps and certificate thereon is in the amended Record page .)

The objection, therefore, to the bond, was unfounded, because said section expressly provides that "the same [the instrument] shall thereupon be deemed and held to be as valid to all intents and purposes as if stamped when made or issued."

Defendant's Fifth Exception.

This exception is to the rejection by the court of the defendant's offer to prove a state of facts such as is set out in his amended third plea, in his amended fourth plea, and in his seventh original plea. The amended third and fourth pleas having been stricken from the case by order of the court, and properly, as has been shown (*ante* pages 19, 20), it needs no argument to show that no evidence could be admissible to prove the truth of the pleas which were thus no longer in the case.

The **seventh original plea** had been adjudged by Mr. Justice Gray, upon the demurrer, to be insufficient. That plea, therefore, was no longer open to the defendant, and no evidence could be introduced in support thereof.

The exceptions of the plaintiff in error, should therefore be overruled and the original judgment be affirmed.

ELIAS MERWIN,
EDWIN METCALF,
Of Counsel with Defendants in Error.

Saml Maddox

APPENDIX.

CIRCUIT COURT OF THE UNITED STATES.

DISTRICT OF RHODE ISLAND.

No. 2056.

ROWLAND HAZARD ET AL. *v.* JOHN N. A. GRISWOLD.

BEFORE GRAY AND COLT, JJ.

OPINION OF THE COURT.

[AUG. 4, 1884.]

GRAY, J. This is an action of debt, commenced in the Supreme Court of the State of Rhode Island, on March 3, 1883, by four citizens of Rhode Island, against a citizen of New York, on a bond dated Aug. 24, 1868, and executed by Thomas C. Durant as principal, and the defendant and S. Dexter Bradford as sureties, binding them jointly and severally to the plaintiffs in the sum of $53,735, the condition of which is, that Durant "shall on his part abide and perform the orders and decrees of the Supreme Court of the State of Rhode Island in the suit in equity of Isaac P. Hazard and others against Thomas C. Durant and others, now pending in said court within and for the county of Newport."

The breach assigned in the declaration is, that Durant has not performed a decree by which that court, on Dec. 2, 1882, ordered him to pay into its registry the sum of $16,071,659.97.

After oyer prayed and granted, the defendant filed ten pleas in bar, and the case was removed on his petition into this court, where the plaintiffs have filed special demurrers to five of the pleas, which have now been argued and will be considered in their order.

The second plea alleges that the supposed writing obligatory "was obtained from the said defendant by the said plaintiffs, and others in collusion with them, by fraud, covin and misrepresentation, and that the said writing was executed in confidence of such misrepresentations."

The demurrer to this plea assigns for cause that the defendant therein "nowhere sets forth any instance of or facts constituting fraud or covin, nor does he set forth the misrepresentations by which said writing obligatory is alleged to have been obtained."

This plea is drawn in accordance with the rules and forms given in 1 Chitty on Pleading (7th Eng. and 16th Am. ed.), 564, 608, and 2 *Ibid.*, 393.

But the only authorities which Mr. Chitty cites are the early precedents of *Wimbish* v. *Talbois*, Plowd. 38*a*, 54*a*, and *Tresham's Case*, 9 Rep. 107*b*, 110*a*, in which it is said "covin is so secret, whereof by intendment another man cannot have knowledge"; and the *obiter dictum* of Lord Ellenborough in *Hill* v. *Montague*, 2 M. & S. 377, 378, that "fraud and covin usually consist of a multiplicity of circumstances, and therefore it might be inconvenient to require them to be particularly set forth."

Both these reasons find a conclusive answer in the clear and emphatic statement of Mr. Justice Buller, that by every rule of pleading, "wherever one person charges another with fraud, he must know the particular instances on which his charge is founded, and, therefore, ought to disclose them. The rule in pleading is this, that wherever a subject comprehends multiplicity of matters, to avoid perplexity, generality of pleading is allowed, as a bond to return *all* writs, etc. But if there be anything specific in the subject, though consisting of a number of acts, they must be all enumerated." *Anson* v. *Stuart*, 1 T. R. 748, 753. And by the weight of modern authority, English and American, it is well settled

that at law, as in equity, a mere allegation of fraud in general terms, without stating the facts on which the charge rests, is insufficient. Lord Chancellor Selborne, Lord Hatherley, and Lord Blackburn, in *Wallingford* v. *Mutual Society*, 5 App. Cas. 685, 697, 701, 709; *Service* v. *Heermance*, 2 Johns. 96; *Brereton* v. *Howe*, 1 Denio, 75; *Weld* v. *Locke*, 18 N. H. 141; *Bell* v. *Lamprey*, 52 N. H. 41; *Phillips* v. *Potter*, 7 R. I. 289, 300; *Sterling* v. *Mercantile Ins. Co.*, 32 Penn. St. 75; *Giles* v. *Williams*, 3 Ala. 316; *Hynson* v. *Dunn*, 5 Ark. 395; *Hale* v. *West Virginia Co.*, 11 W. Va. 229; *Capuro* v. *Builders' Ins. Co.*, 39 Cal. 123; *Cole* v. *Joliet Opera House*, 79 Ill. 66.

The third plea (relying upon the distinction affirmed in *Griswold, petitioner*, 13 R. I. 125, to exist between a bond to "abide and perform" and a bond to "abide" a decree) alleges that the "said writing was obtained from the said defendant by the plaintiffs, and by other, in collusion with them, by fraud, covin and misrepresentation: that is to say, that heretofore the said Thomas C. Durant was arrested on a writ of *ne exeat*, issued from the Supreme Court of the State of Rhode Island, in a suit in equity wherein one Isaac P. Hazard was complainant, and the said Durant and others respondents, which suit is the suit in equity mentioned in the condition to said supposed writing obligatory; and that the plaintiffs, with other persons colluding with them and assisting them as their agents or attorneys, procured the signature of the defendant to said supposed writing obligatory, representing to him that said writing was a bail bond and a bond conditioned that said Durant should abide the orders and decrees of the said Supreme Court in said cause; and that the defendant signed and sealed said writing, relying upon and believing such representations made by the plaintiffs and such other persons colluding with them and assisting them as their agents and attorneys, all which rep-

resentations were untrue and false, and by means of said misrepresentations the defendant in confidence thereof signed and sealed said writing."

For causes of demurrer to this plea, the plaintiffs have assigned that the defendant does not allege therein that he is an illiterate or a blind person, and that upon his request to have the writing read to him it was falsely read, nor that he had not himself read it, nor that he was ignorant of its contents, nor that his signature to it was obtained by the fraudulent substitution of it for another instrument which it was his intention to execute as surety, nor any other facts showing that he did not, in fact, know, and was not bound in law to know, its legal tenor and effect, or which would entitle him to rely upon the alleged representations of the plaintiffs and their agents and attorneys.

The plea is clearly insufficient, for the reasons assigned in the demurrer. A person, capable of reading and understanding an instrument which he signs, is *bound in law to know the contents thereof*, unless prevented by some fraudulent device, such as the fraudulent substitution of one instrument for another. This plea does not aver any fact to excuse or justify the defendant in relying upon the representations alleged to have been made in behalf of the plaintiffs. *Thoroughgood's Case*, 2 Rep. 9; *Anon.*, 8 Kin. 159; *Maine Ins. Co.* v. *Hodgkins*, 66 Maine, 109; *Seeright* v. *Fletcher*, 6 Blackf. 380; *Hawkins* v. *Hawkins*, 50 Cal. 558.

The fourth plea, of which a copy of the bill and record in the suit in equity in the Supreme Court of Rhode Island, mentioned in the bond sued on, is made part, alleges that it appears from an inspection of that bill and record that that court had no jurisdiction of the bill, or of the matter therein set forth, and that there was nothing alleged in the bill upon which that court could make any valid order or decree

whatever, except to dismiss the bill, and that no decree had been made in the suit which the defendant could be lawfully called upon to abide and perform.

This plea is demurred to on the ground that it nowhere alleges that that court had not jurisdiction of that suit by reason of Durant's appearing therein as defendant or submitting himself to the jurisdiction of the court, or that that court had not jurisdiction of the suit and of Durant, or that its orders and decrees therein were not valid and binding upon him.

The record of that suit shows that personal service was made on Durant within the jurisdiction of the court, and that he appeared in the suit. The bond, so far as this plea shows, was voluntarily given by Durant and by the defendant as his surety. The only ground appearing on the record, or suggested in argument, for impugning the jurisdiction of the court, is that the bill which was filed by Hazard in behalf of himself and other stockholders in the Credit Mobilier of America, to charge Durant with certain funds of that corporation, did not contain sufficient allegations that the corporation had been requested and had refused to bring suit against Durant, to support a bill in behalf of the stockholders, within the rule established by the Supreme Court of the United States in *Hawes* v. *Oakland*, 104 U. S. 450. But the Supreme Court of Rhode Island is a court of general equity jurisdiction, and as such entertained that suit. Pub. Stats. R. I., Chap. 192, § 8; *Hazard* v. *Durant*, 11 R. I. 195, and 14 R. I. The defect suggested is *not want of jurisdiction over the whole* subject, but incompleteness in the statement of the facts required to justify the stockholders in invoking the exercise of that jurisdiction. Such a defect or informality cannot be availed of by either of the obligors to defeat an action upon the bond; and whether want of jurisdiction of the former suit on any ground could be set up in

defence of this action, need not be considered. *Jesup* v. *Hill*, 7 Paige, 95; *Griswold, petitioner*, 13 R. I. 125.

The fifth plea alleges that Durant, at the time and place of the making of the supposed writing obligatory, "was unlawfully imprisoned by the said plaintiffs and others in collusion with them, and then and there detained in prison until by the force and duress of imprisonment of him, the said Thomas C. Durant, he, with the said defendant as surety, made the said writing, signed and sealed and delivered the same to the said plaintiffs as their deed."

To this plea the plaintiffs have demurred, because it does not allege that the writing was executed by the defendant under force and duress of imprisonment of himself, nor that he did not voluntarily execute it as surety with knowledge that it was executed by Durant as principal under force and duress of imprisonment, as alleged in the plea.

This plea does not set forth facts enough to make out a defence. Duress at common law, where no statute is violated, is a personal defence, which can only be set up by the person subjected to the duress; and duress to the principal will not avoid the obligation of a surety, at least unless the surety at the time of executing the obligation is ignorant of the circumstances which render it voidable by the principal. *Thompson* v. *Lockwood*, 15 Johns. 256; *Fisher* v. *Shattuck*, 17 Pick. 252; *Robinson* v. *Gould*, 11 Cush. 55; *Bowman* v. *Hiller*, 130 Mass. 153; *Harris* v. *Carmody*, 131 Mass. 51; *Griffith* v. *Sitgreaves*, 90 Penn. St. 161. The case of *Hawes* v. *Marchant*, 1 Curtis, 136, in this court, was not a case of duress at common law, but of oppression by the illegal exercise of official power in excess of statute authority, and was decided upon that ground.

The seventh plea, setting up a release executed to Durant in 1881 by a receiver of the corporation appointed in Pennsylvania, is clearly bad, because that release was executed a

year before the decree of the Supreme Court of Rhode Island, the non-performance of which is the breach alleged in the declaration. The release, if it had any legal effect, could only be availed of by pleading it in that court before the decree. *Biddle* v. *Wilkins*, 1 Pet. 686.

Demurrers sustained.